TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 625.

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK, PETITIONER,

vs.

NORDENHOLT CORPORATION AND THE TRAVELER'S INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

PETITION FOR WRIT FILED NOVEMBER 22, 1921.

WRIT OF CERTIORARI FILED JANUARY 9, 1921.

(28,580)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 10, 1922.

1-3 In the Court of Appeals of the State of New York.

In the Matter of the Claim of GUISEPPE INSANA for Compensation under the Workmen's Compensation Law, Claimant, against NORDENHOLDT CORPORATION, Employer; THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Respondents; THE STATE INDUSTRIAL COMMISSION, Appellant.

Statement.

The injury and death of the employee are alleged to have occurred on the 15th day of May, 1918.

At sessions of the State Industrial Commission held on the third day of Febraary, 1919, and on the 16th day of June, 1919,
4 awards of compensation were made to Sebastiana Insana, the mother of the employee.

An appeal was taken to the Appellate Division of the Supreme Court, Third Department, by the employer and insurance carrier and the award unanimously affirmed. No appeal was taken from this order. Following this decision a motion for reargument was made by the employer and insurance carrier and granted on September 22, 1920. Reargument was duly had and on January 5, 1921, a decision was handed down reversing the award of the State Industrial Commission and dismissing the claim, all concurring. From the order of reversal on this decision this appeal to the Court of Appeals is taken.

Benjamin C. Loder, Esq., is attorney for the employer and insurance carrier. Charles D. Newton, Attorney-General, is attorney for the State Industrial Commission.

There has been no change in any of the parties since the commencement of this action.

5 *Notice of Appeal.*

Supreme Court, Appellate Division, Third Department.

Case No. 58166.

In the Matter of the Claim of GUISEPPE INSANA for Compensation under the Workmen's Compensation Law, STATE INDUSTRIAL COMMISSION, Respondent, against NORDENHOLT CORPORATION, Employer; THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Appellants.

SIRS:

Please take notice that Nordenholt Corporation and The Travelers Insurance Company hereby appeal to the Appellate Division of the Supreme Court, Third Department, from the award of the State

Industrial Commission herein made and entered in the office of the said Commission on the 3rd day of February, 1914.

Dated, New York, February 28, 1919.
Yours, etc.,

AMOS H. STEPHENS,
Attorney for Appellants.

Office and P. O. Address, 30-42 East 42nd Street, Borough of Manhattan, City of New York.

6 To

Hon. Charles D. Newton,
Attorney-General,
The Capitol,
Albany, New York.

Bernard L. Shientag, Esq.,
Counsel to State Industrial Commission,
230 Fifth Avenue,
Borough of Manhattan,
City of New York.

State Industrial Commission,
230 Fifth Avenue,
Borough of Manhattan,
City of New York.

Guiseppe Insana, Claimant,
44 Monroe Street,
Borough of Manhattan,
City of New York.

7 *Notice of Appeal.*

Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of GUISEPPE INSANA for Compensation under the Workmen's Compensation Law, STATE INDUSTRIAL COMMISSION, Respondent, against NORDENHOLT CORPORATION, Employer; THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Appellants.

SIRS:

Please take notice that Nordenholt Corporation and The Travelers Insurance Company hereby appeal to the Appellate Division of the Supreme Court, Third Department, from the award and decision of the State Industrial Commission herein, dated June 16, 1919, and

entered in the office of the said Commission, notice of the filing of which was first sent to the parties on the 5th day of March, 1920.

Dated, March 23, 1920.

Yours, etc.,

BENJAMIN C. LODER,
Attorney for Appellants.

Office and P. O. Address, 30-42 East 42nd Street, Borough of Manhattan, City of New York.

8 To

Hon. Charles D. Newton,
Attorney-General,
The Capitol,
Albany, New York.

Bernard L. Shientag, Esq.,
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230 Fifth Avenue,
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State Industrial Commission,
230 Fifth Avenue,
Borough of Manhattan,
City of New York.

Guiseppe Insana, Claimant,
44 Monroe Street,
Borough of Manhattan,
City of New York.

Form of Claim for Compensation by the Dependents.

State of New York,

Department of Labor,

State Industrial Commission,

Bureau of Workmen's Compensation,

Principal Office: The Capitol, Albany, N. Y.

New York Office: No. 230 Fifth Avenue,

Bureau of Claims.

File No. —.

Case of —— ——. 59466.

To the State Industrial Commission:

I hereby make claim for compensation under section 16 of chapter 67 of the Consolidated Laws.

9 My claim arises out of the death of Giuseppe Insana, who died on 15th day of May, 1918, as a result of injury sustained on 15th day of May, 1918, in the employ of Nordenholt Corp. of 81 New St., N. Y. C.

I was the mother of the deceased Giuseppe Insana and I was dependent upon the deceased for support at the time of his death, to wit:

Deceased contributed about $25 weekly to my support.

I was at the time of death of the deceased receiving support also from no one else of $—— weekly, and am still receiving the same amount. I am not possessed of any other income or means of support except as follows: I have no income whatever.

I have no money deposited in any bank or trust company except as follows: None whatever.

I do not own any real estate, stocks, bonds nor mortgages except as follows: None whatever.

I was born 19th day of November in the year 1869.

Remarks: I have no means of support whatever.

I reside at present at 94 Market Street, in the city and town of New York, county of New York, State of New York.

Dated this 3rd day of August, 1918.

SEBASTIANA INSANA,
(Signature of Claimant).

94 Market Street, N. Y. C. (Address).

10 *Affidavit.*

STATE OF NEW YORK,
County of New York, ss:

On this 3rd day of August, A. D. 1918, personally appeared before me the above-named Sebastiana Insana and made oath that the answers by her above named and subscribed are true.

[SEAL.] KHALIL KHAYAT,
Notary Public, New York County, 70

Address, 95 Liberty Street, New York City.

Proof of Death.

To be Filled Out by Physician Last in Attendance on Deceased.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Division of Claims.

Claim No. 59466, N. Y.
Case of Giuseppe Insana, deceased.
Name of the deceased in full, Giuseppe Insana.
How long have you known the deceased? 2 yrs.
How long have you been medical adviser of deceased? ——.
Age at death, 21 years. Married or single, Single.
Place of death (give street number, city or town and State): No. — —— Street, City or Town of N. Y. City, State of N. Y.
Occupation at the time of death? Labor.

11 Date of accident? May 15, 1918. Date of death? May 15, 1918.

State the cause of death: Deceased found dead on arrival of physician at police station, had been dead about six hours.

Proof of Death.

By Undertaker.

State Industrial Commission.

Principal Office The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Division of Claims.

Claim No. 59466. N. Y.
Case of Giuseppe Insana, deceased.

STATE OF NEW YORK,
County of New York, ss:

Saheatore Latona, being duly sworn, says, that he is a duly licensed undertaker of New York City at 9 Monroe Street, that as such he was required on the 15th day of May, 1918, to prepare the dead body of Joseph Insana for burial; that he placed a coffin, containing the said body, in a grave in Calvary Cemetery; that he shipped said body via to Sebastiana Insana at 91 Market Street,

New York City, that he was directed to conduct such burial by Sebastiana Insana, who authorized the following:

	Removal	8
	Embalming	12
	Drapery	10
	Casket	145
12	On Box	12
	2 Hearse-	20
12	Coach-	72
	Service	2
	Candle	9
	Total	$290

That he was informed said bill would be paid by Sebastiana Insana; that no part of said bill of expenses so authorized for said burial has been paid, except, $290.00 by Saheatore Latona.

Subscribed and sworn to before me this 24th day of August, A. D. 1918.

[SEAL.] DOMENICO BONOMOLO,
Notary Public, No. 189, *County of New York.*

Register No. 9078.

Certificate of person who made funeral arrangements will be required below unless itemized bill of undertaker endorsed "correct" by such person, is attached.

Certificate of Person Authorizing Burial.

— hereby certify that I have read the foregoing affidavit of Saheatore Latona, undertaker; that I authorized the items of expense therein amounting to $290.00, as the mother of deceased workman.

(Signed) her SEBASTIANA (x) INSANA. mark.

13 *Employer's First Report of Injury.*

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Division of Claims.

Claim No. 59466. N. Y.
Case of Giuseppe Insana, deceased
Have no knowledge of any accident occurring to this man on May 15, 1918, while in our employ.

Proof of Death.

Affidavit of Employer.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Division of Claims.

Claim No. —. N. Y.
Case of —— ——.
Name —— ——. 191-.
Address ——.
In the matter of the death of —— ——, late of ——, who was injured about —— M., on the — day of ——, 191-.
Have no knowledge of any accident occurring to this man on May 15, 1918, while in our employ.

Death Certificate.

418.

New York 9/18 1918.

A Transcript from the Records of Deaths Reported to the Department of Health of the City of New York.

14 State of New York.

Department of Health of the City of New York.

Bureau of Records.

Certificate of Death.

D. Case 59466.

1. Place of Death Borough of Manhattan. Registered No. 16310. No. 14 St. & 1st Ave. South Bound L. Sta.
Character of premises, whether tenement, private, hotel, hospital or other place, etc. ——.

2. Full name: Joseph Ingana.
3. Sex: Male.
4. Color or Race: White.
5. Single, married, widowed, or divorced (write the word): single.
6. Date of Birth: Month, ——, Day, —, Year, ——.
7. Age: 21 yrs. — mos. — ds. If less than 1 day, hrs. or min.

8. Occupation: (A) Trade, profession, or particular kind of work: Laborer.
(B) General nature of industry, business or establishment in which employed (or employer): ——.
9. Birthplace (State or country): Italy.
9*a*. How long in U. S. if foreign born: 9 yrs.
9*b*. How long resident in City of New York: 9 yrs.
10. Name of father: Frank Ingana.
11. Birthplace of father (State or country): Italy.
12. Maiden name of mother: Sebastiana Guzzone.
13. Birthplace of mother: Italy.
14. Special information required in deaths in hospitals and institutions and in deaths of nonresidents and recent residents. Former or usual residence 146 Perry Street.

15 Where was disease contracted, if not at place of death? ——.
Filed May 16, 1918.

15. Date of death: May 15, 1918.
16. I hereby certify that the foregoing particulars (Nos. 1 to 15 inclusive) are correct as near as the same can be ascertained, and further certify that I have this 15th day of May, 1918, taken charge of the body of deceased found at 21st Pct., and that an inquest thereon is pending.

——— ———,
Coroner.

17. I hereby certify that I have viewed said body and from examination and evidence, that he died on the 15th day of May, 1918, at 6 P. M., and that the chief and determining cause of his death was acute cardiac dilatation, that the contributory causes were Chronic Cardiac Valvular disease.

THOS. L. B. CASSASA, M. D.,
Coroner's Physician.

CHAS. NORRIS, M. D.,
Chief Med. Ex.

18. Place of Burial: Calvary Cemetery.
Date of Burial: May 18, 1918.
19. Undertaker: S. Latima.
Address: 9 Monroe Street.

A true Copy.

S. W. WYNE, M. D.
Assistant Registrar.

R. E.

16 FRANK J. MONAGHAN, M. D.,
Secretary Board of Health, the City of New York.

Notice.

In issuing this transcript of record, the Department of Health of the City of New York does not certify to the truth of the record transcribed. The seal of the Department of Health attests only the correctness of the transcript, as no inquiry as to the facts reported has been provided for by law.

Minutes of Hearings.

State Industrial Commission,

230 Fifth Avenue, New York City.

December 18, 1918.

Case No. 59166.

GUISEPPE INSANA, Claimant; NORDENHOLT CORPORATION, Employer; TRAVELERS INS. CO., Carrier.

Hearing before Deputy Commissioner William C. Archer, December 18, 1918.
L. B. Siegel, hearing stenographer.

Appearances:

Widow present.
Mr. E. A. Willoughby for the carrier.

Mr. Willoughby: I don't know what facts your file contains. We have made an investigation in this case and we believe the
17 record should be completed and take testimony before a decision is reached. At the present we are objecting to an award on the ground the employer was not notified of any accident causing death of this claimant within the prescribed time as mentioned in section 18 of the law. I have ascertained that the Commission have forwarded the necessary claim papers to the employer known as C-2, Employer's Report of Accident, which they have refused to make out on the ground they knew of no accident occurring. I also understand that the C-19 form was sent to the employer by the Commission which is known as the Proof of Death Claim which was not executed by the employer in view of the fact he had no knowledge of the accident. We have secured several affidavits, from the foreman in immediate supervision of the claimant at the time of the alleged accident, also affidavit from the chief or general foreman of the operations at the place of the alleged accident, also from the vice-president and general manager of the employer corporation and they are all substantially the same that

they have no knowledge of any accident occurring, or any report of an accident.

Commr. Archer: Are you offering them?

Mr. Willoughby: I won't to-day if you will adjourn the case for a more lengthy hearing. Another objection is this, on the death certificate the cause of death is given as "Acute Cardiac dilatation, chronic cardiac valvular disease," which is a chronic condition which the claimant experiences before the accident. We are contending that the statute did not contemplate paying compensation for misfortunes, but for accident. As I understand it the claimant in this case died on an elevated railroad structure in a car on his way home from work. It might be that climbing of the stairs or some exertion might cause a cardiac dilatation and we believe the opposite side ought to be heard at the same time when you heard the testimony of the widow.

Commr. Archer: All right, three weeks.

Clerk of Session: There are some witnesses present for the mother.

Commr. Archer: All right, we will hear them.

Mrs. SEBASTIANA INSANA (mother of deceased), being duly sworn, testified as follows:

By Commr. Archer (through Interpreter D'Andrea):

Q. Are you the mother of the deceased?
A. Yes.
Q. Where do you reside?
A. 45 Monroe Street, City.
Q. How old are you?
A. Fifty.
Q. Who resided with you?
A. Myself and my son.
Q. Guiseppe?
A. Yes.
Q. Anybody else?
A. Nobody else.
Q. Were you dependent upon Guiseppe for support?
A. Yes.
Q. Did you have any other source of income?
A. No other resources.
Q. Did you have any other children who helped you?
A. No, he was the only one; he was the only child I had.

Commr. Archer: Do you want to go any further on that point, Mr. Willoughby?

Mr. Willoughby: No.

Commr. Archer: Dependency is stipulated then.

By Mr. Willoughby:

Q. Your husband is dead?
A. He died twenty years ago.

Commr. Archer: The dependency question is eliminated.
Mr. Willoughby: Yes.
Commr. Archer: And the wages?
Mr. Willoughby: Yes, she gets the maximum.

By Commr. Archer:

Q. Was Giuseppe a regular worker?
A. Yes.
Q. Had he been sick at any time during the year before he died?
A. No, never.
Q. Who is your family physician?
A. I never had any.
Q. On the day he died, do you remember him leaving in the morning to go to work?
A. Yes, on May 15th, he left the house in good physical condition.
Q. How big a man was he?
A. He was a strong, tall young man.
Q. How old was he?
A. Twenty years and five months when he died?
Q. Was he fat?
A. He was regular, not fat nor thin.
Q. Was he short of breath?
A. No, never at all.
Q. Did he ever complain of his heart?
A. No, sir, never.

By Mr. Willoughby:

Q. Did any doctor ever examine his heart?
A. Never, he was always in good health.

Mr. PAVLO LESPINO, 116 Madison Street, New York City, being duly sworn, testified as follows:

By Commr. Archer (through Interpreter D'Andrea):

Q. Did you know Giuseppe Insana?
A. Yes.
Q. How long have you known him?
A. Two or three years.
Q. Were you a fellow workman?
A. Sometimes.
Q. You remember the date of his death?
A. I do not remember the date of his death.
Q. Do you remember that he died one day after working?
A. He died on the same day that we worked.
Q. Did you work close enough to him that day to know what work he did?
A. We were working side by side, together?
Q. Were you his partner on the work?
A. Yes.

21 Q. What were you doing?
A. We were lifting up sand bags.
Q. Where were you putting them, what were you doing with them?
A. We were lifting up those bags in order to place them on something, a barrel.
Q. How much of that work had you done that day?
A. Until about five or six minutes before we got through working.
Q. What do you mean—that you had worked all that day?
A. Yes, all day and until five minutes before five.
Q. Was it hard work?
A. It was very bad working, very heavy.
Q. All longshore work is hard work, isn't it?
A. Generally it is hard work and heavy work.
Q. How did this work compare with the ordinary or average work of the longshoreman?
A. It wasn't very heavy in a general way but it was more dangerous.
Q. What was dangerous about it?
A. The bags we were handling were very heavy, hard as marble and you can easily get hurt on it.
Q. Was anybody hurt?
A. On the same day three men besides him met with an injury.
Q. In doing that work?
A. Yes, doing the same work.
Q. Did Giuseppe Insana meet with any injury?
A. Yes, he met with an injury five minutes before five o'clock in the evening.
Q. What was it?
A. He slipped and fell against like a platform from nine or ten feet high, against which he fell with his chest with force.
Q. Describe it?
22 A. (Witness described a falling movement holding his hand over the right chest, indicating that claimant fell with force against the right chest.)
Q. How far did he fall?
A. (Indicating with a forward movement with right chest against the table.)
Q. Did he fall from a higher plane to a lower plane or was he projected against something violently on the same level?
A. We were on the bags myself and him at that time, when he slipped and fell down this way (indicating with same movement).
Q. Were these bags being piled in rows against the wall?
A. We were making piles of bags.
Q. Were you on a pile of the bags?
A. I was on a pile.
Q. Was Giuseppe Insana on a pile, too?
A. Yes.
Q. How high was the pile from the ground below?
A. Higher than myself.

Q. You are about five feet seven. When you were standing on that pile was there another pile?
A. We were making another pile in order to lift up bags there.
Q. You were standing on a pile and trying to put bags on a pile still higher?
A. Yes.
Q. What caused him to fall and in what manner did he fall?
A. While we were lifting a bag he slipped and fell.
Q. Backwards?
A. Face forward.
Q. And what did he hit or strike?
A. I am not sure if he fell on the bags or on the floor.
Q. Did you see him fall?
A. Yes, I was right there.
23 Q. How did he lay, on his head, face, feet, side or knees?
A. I went over to him myself and helped him up.
Q. How did he lie?
A. I got hold by the arm and helped him out.
Q. How did he hit the ground?
A. He fell with his left chest on the ground.
Q. How do you know he did?
A. Because he was lifting up bags with me. I saw him do so.
Q. You say you helped lift him up?
A. Yes, we went there and helped him out.
Q How did he hit the ground?
A He fell with his left chest on the ground.
Q How do you know he did?
A. Because he was lifting up bags with me. I saw him do so.
Q You say you helped lift him up?
A. Yes, we went there and helped him out
Q Did he assist himself in getting up?
A I got hold of him by the two arms and lift him up.
Q Could he help himself?
A I lift him up myself and then he sit down.
Q. What did he say, if anything?
A. I asked him, "What was the matter with you?" and he said, "I hurt myself on the left side."
Q. What did he do then, that is Insana?
A. I left him there and then the timekeeper got all the names and then I left them there and I went home.
Q. Did the timekeeper come right over there and get the names?
A. He did take my name, I am sure of that.
Q. Who was the timekeeper?
A. I do not know his name, I only worked there one day.

24 By Mr. Willoughby:

Q. What time did the accident occur?
A. Four or five minutes before we got through working.
Q. And five o'clock was quitting time?
A. Yes.
Q. Do you know what these bags contained?

A. It was red, like blood.
Q. Isn't it a fact it was an ingredient of tobacco in it?
A. No.
Q. Didn't smell like tobacco?
A. Only the hands got dirty, that's all I know.
Q. Who was your employer?
A. I do not know him as I only worked there one day.
Q. Do you know the name of the people you worked with that day?
A. I do not know their names.
Q. You don't know if you were working for Brady & Gioe or any other stevedore?
A. No.
Q. Do you know what pier it was?
A. I took the *elevator* and got off at 23rd Street and then I took the boat, I do not know where I went.
Q. Then you don't know whom you worked for?
A. There are so many Americans don't know where they are going so why should I be expected to know where I went?
Q. Then it is a fact that you don't know where you worked on May 15, 1918?
A. I don't know his name.
Q. You say you saw the deceased fall, did his foot slip forward?
A. He slipped and fell.

By Connor Archer

Q. How do you know it was the same day that he died?
A. I had knowledge from the townsmen the same night.
Q. When did you gain that knowledge?
A. It was about eight o'clock that I found it out that he died.
Q. The same night?
A. Yes.

By Mr. Willoughby:

Q. Did the deceased live near you?
A. I lived in Catherine Street and he lived on Madison Street.
Q. How did you find out that he died that same night?
A. From his townsmen.
Q. Did his right foot slip forward?
A. With the left foot.
Q. Did his left foot slip forward?
A. He slipped with the left foot.
Q. Did his left foot slip forward?
A. Yes.
Q. Where was he standing at the time?
A. On the pile of bags where I was myself.
Q. If his left foot slipped forward how is that he didn't fall backwards?
A. (Indicated with the left foot forward and falling forward.)

Q. He can't explain why he didn't fall backwards when he slipped forward?
A. He slipped with his foot and went face forward.
Q. Did anybody else see him fall?
A. I was alone; I do not know if anybody else saw it.

By Mr. Willoughby:

Q. Did you ever hear of anybody else since the accident who was a witness to it and saw as much as you did?
A. When he fell I was there present myself, the others came over later.

26 By Commr. Archer:

Q. How much later?
A. They came there within a second.
Q. Was any other person close enough to have seen him fall?
A. I was the nearest one there.
Q. Was anybody else near enough to have seen him fall?
A. I do not know about the others, I myself was near him.
Q. Did anybody assist you in lifting him up?
A. The gang came there after I lift him up.
Q. Did anybody assist you in lifting him up?
A. Myself alone, I lift him up.

By Mr. Willoughby:

Q. Did you speak to the deceased after you picked him up?
A. Yes, I asked him what was the matter and he said, "I hurt myself on the left side" (holding hand over the region of the heart).
Q. What did he say caused him to slip?
A. He said, "'I fell and I hurt myself.'"
Q. Did he say what caused him to slip?
A. That's the answer.
Q. Do you know what caused him to slip?
A. I do not know what caused him to fall, all I do know is that he was working when it happened.
Q. Did he have something wrong with his heart and fell as a result of the heart trouble and you not know anything about it?
A. I do not know if he was suffering from any disease, but I do know that he was well while he was working with me.
Q. Do you know what caused him to fall?
A. I do not know.
27 Q. Did he tell you what caused him to fall?
A. No.
Q. Did he tell you he had a pain and indicate over the region of the heart or did he say he hurt himself in the heart?
A. He told me, "I slipped, and I fell, and I hurt myself on the left side."
Q. Did he get up on the bags again?
A. It was about time to get home and then I went home.

Q. If a witness stated that he did go back on the bags to work would that be true?
A. It is my opinion that he was unable to return to work in that condition.
Q. But you don't know if he returned to work or not?
A. I do not know.
Q. How heavy were these bags?
A. Over 100 pounds.
Q. Then you don't know and can't swear for whom he was working at that time?
A. I do not know the name because I worked there only one day
Q. Who hired you?
A. I do not know his name, the boss.
Q. How did the claimant fall—from one height to another, a lower height?
A. He slipped and fell.
Q. Did you notice whether there was any ambulance called or not?
A. I do not know, but I do know that he died in 14th Street
Q. Do you know how the deceased got home that night?
A. I do not know.
Q. Would he have to go the same way that you would go?
A. Yes, the same way.
Q. Then he would have to take a ferryboat from Brooklyn to New York?
A. Yes.
28 Q. And then take another car on the New York side?
A. Yes.
Q. And then take an elevated railroad?
A. No.
Q. How many cars would he have to take after he got off the ferryboat?
A. When we got off the boat we went on the elevated at 23rd Street.
Q. And you climbed up the stairs to the elevated?
A. Yes, and we got off at Canal Street.

Comm. Archer: Where did he die?
Mr. Willoughby: In the elevated car as near as our investigation proves.

Q. Do you know with what severity he struck his chest on the platform as you call it?
A. All I know he fell, with what severity or force I do not know
Q. Didn't you see him fall?
A. He slipped and fell on the ground.
Comm. Archer: Was it an unchecked fall?
A. He slipped with the left foot and he fell.
Q. He was on the same level with you when he fell?
A. Yes.
Q. And did he fall down between bags?
A. I do not know, he slipped and fell.

Comm. Archer: When he struck the ground was he between two piles of bags?

A. He fell from a height of eight or nine feet.

Q. On to what?

A. I do not know if he fell on the ground or on the bags.

Q. How do you know he struck his chest on the platform?

A. He told me himself.

Q. You didn't see it then?

A. I did see him and he also told me.

29 Comm. Archer: What you mean is you don't know if he hit the bags first before he hit the ground?

A. I do not know if he fell on the ground or on the bags first.

Q. Isn't it a fact that you don't know how he fell nor if he struck anything hard?

A. I do know that I saw him fall on the ground with his left side, and then I asked him "were you hurt" and he said, "Yes, on the left side."

Q. Did you look at his chest to see if there were any marks?

A. No.

Mr. Rocco BENEDELLO, 93 Market Street, being duly sworn, testified as follows:

By Comm. Archer (through interpreter D'Andrea):

Q. What do you know about this?

A. I was working four or five feet distant from where Insana was.

Q. Did you see him fall?

A. No, I saw him on the ground.

Q. In what position?

A. He was trying to get up and that man (indicating previous witness) was helping him up.

Q. Are you sure it was Giuseppe Insana?

A. Yes.

Q. How long had you known him?

A. Four or five years.

Q. Did he fall that day?

A. Yes.

Q. How do you know he did?

A. I was working in the same gang.

Q. Where did he fall from?

A. I do not know how he fell, only I saw him on the ground.

30 Q. What did he say if anything?

A. I went near him and asked him what happened and he said "I hurt myself on the left side."

Q. Is that the day he died?

A. Yes, the same Monday.

Q. How do you know that?

A. It was five or six minutes before we stopped working.

Q. Was any agent of the employer there, any timekeeper or foreman?
A. There were a whole lot of workmen there.
Q. How do you know that he died the same day that he had this fall?
A. I learned it the same night about eight o'clock when I went out and heard that he died.

By Mr. Willoughby:

Q. You are friends of the deceased?
A. I know him, but that's all.
Q. See him every day?
A. Sure, every day, I used to go to work with him.
Q. You didn't see the deceased fall?
A. No.
Q. Did you talk to him at that time at five minutes to five?
A. I spoke to him when he was on the ground.
Q. And that was just after he had landed on the ground?
A. While the previous witness was lifting him up I spoke to him.
Q. What did he tell you then?
A. I asked him what was the matter and he told me he hurt himself.
Q. What else did he say?
A. He said "I hurt myself on the left side."
Q. Did he say what caused him to fall?
A. I did not ask him that question.
31 Q. Did he say he hurt his chest from the fall?
A. Yes.
Q. Did he say he hurt his heart from the fall?
A. Yes.
Q. Do you know if he went back on the job to work for a little while that night?
A. I do not know.
Q. Did you go home with him that night?
A. No, I went home by myself.

By Comm. Archer:

Q. Was he seemingly a strong fellow?
A. He was neither robust nor slim, just——
Q. Did you go home before he left?
A. Yes.

By Mr. Willoughby:

Q. When you were leaving what was Insana doing?
A. I took my coat and went home and left him there.
Q. Whom were you working for?
A. I don't know the name. I was there only one day.
Q. Where were you working?
A. It was in Greenpoint.

Q. Do you know the pier?
A. I don't remember.
Q. Do you know the name of your foreman?
A. Gaetano Gavano. He took me there to work.

By Comm. Archer.

Q. Did he know that Giuseppe Insana fell that day?
A. I don't know that.
Q. Was the timekeeper there?
A. He was there taking names of the workmen.

32 By Mr. Willoughby.

Q. What was the name of the timekeeper?
A. I do not know.
Q. Was he taking the names of the men because they were quitting work or because of the accident?
A. Taking names of the men quitting work that night.
Comm. Archer: Did he know Insana was hurt?
A. I do not know that.
Q. You don't know the name of the foreman you worked for?
A. I don't know, they gave me a check.
Q. What did it say on it?
A. There was a name and a number.

Mr. Willoughby: The general foreman was Viscuso Vendero and the foreman in charge of operations at Greenpoint was Sebastino Rivelo. The records show they were handling tobacco bags.
Commr. Archer: Adjourned to Dec. 30 for further hearing. Have all of them here. The widow shows a brass check as follows: "C. N.—577."

33 State Industrial Commission.

Public Hearing Before Deputy Commissioner Archer.

January 6, 1919.

Case No. 58166.

GUISEPPE INSANA, Claimant-Decedent; NORDENHOLT CORP., Employer; TRAVELERS INSURANCE CO., Carrier.

Appearances:

E. A. Willoughby, Esq., representing Carrier.
Mrs. Insana, Widow, present.

Witnesses:

Pasquale Marra, 678 76th Street, Brooklyn, N. Y.
Viscuso Venerdo, 105 Columbia Street, Brooklyn, N. Y.
Sebastino Rivelo, 116 Madison St., New York.

PASQUALE MARRA, being duly sworn, testified:

By Mr. Willoughby:

Q. Mr. Marra, are you connected with the Nordenholt Corp.?
A. Yes, sir, superintendent of Nordenholt Corp.
Q. And was your employer a corporation conducting work
34 on May 15, 1918, at one of the Greenpoint docks, Brooklyn?
A. Yes, sir.
Q. What kind of cargo were you handling?
A. Bags of extract, about 100 pounds a piece.
Q. Extract of what?
A. I don't know.
Q. Tobacco?
A. No, wooden powder.
Q. There is a claim filed with the commission by the widow of Giuseppe Insana for death benefit payments under compensation, for an accident sustained by Giuseppe Insana on May 15, 1918, on the Greenpoint docks; were you operating at that time? Were you on the premises?
A. Yes, sir.
Q. And were you there all that day?
A. Pretty near all that day.
Q. Were you there at quitting time?
A. I was there at quitting time.
Q. Was any accident ever reported?
A. No accident whatever was reported at the time, until the next day we got back to work and some of the employees told me the man died on his way home on the train.
Q. He never told you anything about an accident?
A. No, sir.
Q. And when the first time you had any idea that there was a claim being filed against you for the death of this man?
A. I guess it was ten or twenty days after when one of the Travelers Insurance came around and told me about it.
Q. Was that the day he took an affidavit from you?
A. Somewhere around a week or two after, it was.
Q. Was that the day he took an affidavit from you?
A. That is the day.
35 Q. Is that the affidavit you gave this Mr. Ventura,—is that his name?
A. Yes, sir, that is his name.
Q. You swore to it at that time?
A. Yes, sir.
Q. Just read what it says there (indicating),—the 27th day of June—was that it?
A. Yes, that was it.
Q. That is the first knowledge you had there was a claim?
A. Yes, it was. Of course, the next day after the man died, they told me on the job he died on his way home. I didn't pay no attention to it.
Q. They did not come and report any accident?

A. No, sir. We have a timekeeper there and if any accident happens——

Q. (Int.) You were right there on the premises, especially at closing hour and between four and five?

A. Yes, sir.

Q. And you had charge of the operations?

A. Yes, sir.

Q. And no mention of any accident was ever made to you?

A. Not that I know of and not that the timekeeper knows.

Q. The only knowledge you had of this case was when Mr. Ventura came to you to investigate for the Travelers Insurance Company?

A. Exactly.

Mr. Willoughby: I wish to state to the commissioner the reason that we investigated this claim is because the attorneys filed a claim with Brady & Gioe, as evidence by that letter, Commissioner, and in view of that we proceeded to investigate and that is the reason that gentleman went to the docks in question and found out Brady
36 & Gioe were not the employers. (Submits letter to Deputy Commissioner Archer.)

(Witness excused.)

Viscuso Venerdo, being duly sworn, testified.

By Mr. Willoughby:

Q. Were you employed by the Nordenholt Corp. on May 15, 1918?

A. Yes.

Q. In what capacity, Mr. Venerdo?

A. What?

Q. What did you work at—foreman?

A. Foreman.

Q. Did you have charge of the operations at the Greenpoint docks?

A. Yes.

Q Under date of May 15, 1918?

A. Yes, sir.

Q. Do you recall the deceased in this case, Guiseppe Insana?

A. Which, the man?

Q. Yes.

A. I don't know him.

Q. You did not know him personally?

A. Did not know him at all.

Q. You did not know him personally?

A. No, sir.

Q. Now on the day of this accident, May 15, was there any accident reported to you?

A. No, sir.

Q. By any one?

A. No, sir.

Q. Were you there all the time?

A. Yes, sir.
Q. Did not see any accident?
A. No, sir.
Q. No commotion,—no confusion?
A. Nothing.
Q. Nothing at all?
A. No, sir.
Q. The time to stop was what hour?
A. Five o'clock.
37 Q. Did everybody go home?
A. Everybody went home.
Q. Nobody was sick around there?
A. Nobody sick.

By Deputy Com'r Archer:

Q. Was Guiseppe Insana hurt that day?
A. (Does not answer.)

Mr. Willoughby: Was Guiseppe Insana hurt that day?

By Deputy Com'r Archer:

Q. What is your answer?
A. What did you say?
Q. Was Guiseppe hurt that day?
A. (Thru Interpreter Paura.) I did not see anybody get hur

By Mr. Willoughby

Q. You were there all the time?
A. (English.) I was there all the time.

By Deputy Com'r Archer:

Q. After you first heard about it, did you make any investi-
tion?
A. (Thru Interpreter.) Nobody told me he was hurt.
Q. Did you make any investigation?
A. (Thru Interpreter.) No, sir, I knew nothing about it.

By Mr. Willoughby:

Q. Did you hear the next day about the man dying?
A. (English.) The next day just one man told me that one m
who worked the first day died on the train.
38 Q. Going home the night previous?
A. Going home that night.
Q. There was no mention then of an accident being the caus
his death?
A. (Thru interpreter.) No, sir.
Q. When did you first know that there was a claim filed by
widow in this case?

A. (Thru interpreter.) I heard of it when Mr. Ventura, the investigator called on me.
Q. The investigator of the Travelers Insurance Company?
A. (English.) Yes.
Q. That is the first time you ever knew there was claim filed.
A. Yes, sir.

(Witness excused.)

SEBASTINO RIVELO, being duly sworn thru Interpreter Faura, testified:

By Mr. Willoughby:

Q. Mr. Rivelo, do you understand English at all?
A. (In English.) No.
Q. Were you assistant foreman for the Nordenholt Corporation on May 15, 1918?
A. (All replies thru Interpreter.) Yes, sir.
Q. What kind of cargo were you handling that day?
A. Some kind of wood ground up.
Q. Did you hire the deceased in this case on that day to work?
A. Yes.
Q. And did you have supervision over the gang in which he did work that day?
A. I was with another gang.
Q. Do you know of any accident of your own knowledge?
A. I heard of it the same day before he went home, but I did not see it.
39 Q. Did the deceased ever talk to you about the accident?
A. No. I did not see it.

By Deputy Com'r Archer:

Q. Did you hear that he was hurt before you heard that he was dead?
A. As we were stopping work some of his fellow workmen told me he hurt himself, but I did not see him.
Q. Was that before you heard that he was dead?
A. Before he went home.

By Mr. Willoughby:

Q. Is that all you heard about it?
A. That is all.
Q. Did the deceased walk home that night?
A. I did not see him; I don't know how he went home.
Q. He did not stay on the premises, on the dock, after quitting time?
A. I, the boss, and the other foreman were the last on the dock.
Q. He wasn't there then?
A. No.

By Deputy Com'r Archer:

Q. Who was the boss?
A. There he is (indicating).

By Mr. Willoughby:

Q. Did you hear where he did die?
A. They told me he died on the train.
Q. The elevator train?
A. I don't know—they told me it was on a train.

Mr. Willoughby: The evidence shows where it was.

40 By Deputy Com'r Archer:

Q. Was Viscuso the boss?
A. Yes.
Q. Was Viscuso present when you were notified that Insana had been hurt?
A. No, he was out with a gang.
Q. Did you report his injury to anybody?
A. No, I did not tell anybody about it because they said they would take it up the next morning.
Q. Who said they would take it?
A. The deceased's fellow workmen, his gang—they were all going home any how.

By Mr. Willoughby.

Q. No ambulance called or anything like that?
A. No, sir.

By Deputy Com'r Archer:

Q. Did you make any subsequent investigation?
A. No, sir, nothing at all. I had nothing to do with making any investigation.

(Witness excused.)

Deputy Com'r Archer: Call the next witness.
Mr. Willoughby: That is all we have here, Commissioner.
Deputy Com'r Archer: That is about all the evidence? It is ready for decision?
Mr. Willoughby: Yes. Our attitude at the present time is: We believe there is insufficient proof to connect death in this case with the alleged accident. We also contend that the proof of accident in this case as presented by the opposite side is entirely inade-
41 quate to establish an accident within the meaning of the law. The testimony on this point, as given by the widow's witnesses, Laspina and Bernardello, is entirely vague. You, of course, remember that they gave contradictory versions and descriptions of this accident. This testimony certainly did not describe the

severity of the trauma in which death could be connected in this case. There was nothing in the testimony that would lead you to connect death, which was sustained that evening on board an elevated railroad train, while the claimant was so journeying home. The claimant left the premises unassisted according to the testimony. The death certificate in this case, Commissioner, does not speak of the trauma or any accident. It gives the cause of death as acute cardiac dilatation, and that the probable cause was chronic cardiac and valvular disease. You will recall as to the uncertainty of these witnesses whom I have named, that when asked by you, "For whom did they work?" they could not answer that, even though they were co-workers of the deceased. This last, I think, ought to suggest to you the flimsy fabric of the testimony of these witnesses. We further contend, Commissioner, that the proper basis and proofs for a claim under this act have not as yet been presented to the commission. There certainly is no medical evidence before you to connect the alleged injury in this case with the death sustained and the causes suggested, as described on the death certificate. If the commission believes that an accident happened, can the commission go so far as to presume in the absence of medical proof that the
42 trauma alleged to have been sustained in this case to the chest was severe enough to cause premature death of any injury to the heart which would contribute to the death of this claimant at an unusual time?

Deputy Com'r Archer: Decision reserved.

State Industrial Commission.

Case No. 59466.

GUISEPPE INSANA, Claimant,

against

NORDENHOLT CORPORATION, Employer; TRAVELERS INSURANCE CO.

Minutes of Hearing at 230 Fifth Avenue, New York City, held on Monday, February 3, 1919, before Commissioner Sayer.

ANNA L. GOLDSAMT,
Stenographer.

Appearances:

None.

Decision: Present Payment $219.26 for 38 weeks from May 15, 1918 to February 5, 1919. Bi-weeklies $11.54, to mother for herself. $100 for funeral expenses to be paid to mother, Mrs. Sebastiana Insana, 44 Monroe Street, N. Y. C.

Added to calendar.

43 State Industrial Commission.

Case No. 59466.

GUISEPPE INSANA, Claimant,

against

NORDENHOLT CORPORATION, Employer; TRAVELERS INSURANCE C

Minutes of Hearing Held at 230 Fifth Avenue, New York City, He on Monday, March 12, 1919, Before Deputy Commissio Archer.

Appearances:

Mr. E. A. Willoughby, representing Carrier.

Com. Archer: This case is on the calender for hearing in order give the carrier and employer an opportunity to cross examine Chief Medical Examiner and make a report on the case.

44 State Industrial Commission.

May 26, 1919.

Death Case 59466.

GUISEPPE INSANA

against

NORDENHOLT CORPORATION, TRAVELERS INSURANCE COMPANY.

Minutes of Hearing at 230 Fifth Avenue, New York, Monday, M 26, 1919.

Before Commissioners Mitchell and Lyon.

Mr. Fitzpatrick, Clerk.

Appearances:

Mr. Edw. Willoughby, for the Travelers Ins. Co.
Dr. Clarke, representing Travelers Ins. Co., was also present.

Mr. Willoughby: We received a letter March 25, 1918, addressed to the Travelers Insurance Co.: "I let you know that Joe Insana die in the elevated train and his parents sued the Company and won the case with false testimony, and the false testimony says that he was hurt at the place where he worked, but he wasn't hurt in the plac where he worked. He had heart failure the same as his father di for some time years ago. Now, what I want to say isn't to pay the people any money at all: I give you people more information no if you care to take it. If you take a real chance win the case th

second time—answer me and let me know who I must come
45 and see at the Company there and give personal information. Now, don't fail to put the name of a certain party whom I must come up and see. My address is Tony Cherinco, 5 Monroe Street." I would like to submit in evidence, the Commission to investigate from it; we have not.

Com. Lyon: Why don't you get hold of him. I don't think that is evidence; it shows where you might get some evidence; I think you better subpoena him.

(Dr. R. Lewy, of the Commission's Medical Dept., appears.)

Chairman Mitchell: Now, doctor, this case was put on because the Company want to ask you some questions.

Dr. Lewy: You remember that this opinion is based on the papers here (indicating file).

Examination of Dr. Lewy.

By Mr. Willoughby:

Q. Doctor, when you formed your opinion medically on this case, did you have before you the history of a pre-existing disease of the heart?

A. Yes, sir, I mentioned it here (indicating file).

Q. Chronic cardio-vascular disease?

A. Yes; I mentioned it in my paper.

Q. Did you have before you at that time information that the father of this deceased also suffered the same disease?

A. I had not.

Q. From the testimony as to the injury to the chest, doctor, do you believe that the injury would have brought about acute
46 dilatation of the heart if the injury permitted a man to leave his place of employment, walk several blocks up the elevated stairway, and proceed home, on which journey he died?

A. The acute dilatation came on after he walked up the elevated stairs.

Q. Did you ever hear of a case, doctor, where a trauma to the chest as trivial as the case represents to have as a sequence of such trauma dilatation of the heart?

A. It is not to me trivial, and it is not to me the injury in this case which you call trivial.

Q. It is alleged that the claimant fell and struck his chest; he immediately proceeded home and took the avenues and elevated structure to arrive home.

A. Yes, sir; his action produced dilatation of the heart in a previous heart disease; that means in a previous heart which has been seen; you need have no injury to the chest at all to cause acute dilatation of the heart.

Q. Isn't it true, doctor, that dilatation of the heart is caused by exertion rather than trauma?

A. Dilatation of the heart can be caused by physical exertion as well as emotion and need have no trauma to the chest directly.

Q. Well, as to the exertion, physical exertion, will you admit doctor, that that exercise could have been brought on by climbing an elevated stairway and proceeding to the home of the claimant?

A. Yes, sir.

Q. Without any history of trauma previously sustained?

A. If he had a previous heart disease, yes, sir.

47 Q. The record speaks of chronic valvular heart disease?

A. Yes, that can happen.

Q. Would a blow in the chest have for its result a dilatation of the heart?

A. It can happen very easily.

Q. Such as described in your case?

A. Yes, sir.

Q. If a man sustained a trauma to the chest such as described in this case, wouldn't the acute dilatation come on immediately after the trauma and not a long while afterwards while the man was going home?

A. How long after?

Q. An hour.

A. Yes, it could happen an hour afterward. The heart becomes decompensated and at the time of its decompensation the acute dilatation.

Q. Did you gather from any of the records before you as to the extent of the alleged trauma to the chest?

A. Let me refer to what I have written and then I will tell you (looking at file). Now, I will answer that by reading to you what I have at my disposal here. "To render an opinion whether cause of death is a sequence of the alleged injury, such can only be answered on a hypothetical question, as there is no medical evidence whatsoever of the claimant's condition prior to his sudden death which occurred on an elevated train. The evidence as to the description of the injury is very contradictory. Some of his fellow workmen saw him fall from a height of about 8 feet on his chest and said that the deceased complained of pain immediately in the region of his chest." Now, this is what I have considered in my opinion.

Q. Could you prove, doctor, or could you come to any con-

48 clusion positive of a dilated heart without examination at the time?

A. I said on the bottom "Autopsy in such case would be very important and helpful."

Q. Such was not procured?

A. Such was not procured. I have covered every one of these points.

Q. There was no examination that you know of of the man before death?

A. Nothing at all that I know of.

Q. Doctor, have you amongst your records anywhere adequate in-

formation that the claimant experienced acute cardiac dilation as per the diagnosis appearing on the death certificate?

A. No, only from the description of the findings on these claim papers, I confirmed such diagnosis upon the death certificate.

Q. Have you any records amongst your papers, doctor, as to the injury to the chest, as to its severity?

A. Only what I have referred to just now, by some fellow workman.

Q. Amongst your records, doctor, is there any information from eye witnesses as to any external signs of violence on the deceased's chest?

A. You mean visible signs?

Q. Yes.

A. I have no such record.

Q. Wouldn't an injury to the chest that would cause acute dilatation of the heart be noticed on the external appearance of the chest?

A. Had he lived longer. It takes some time for a discoloration to occur. A discoloration can only occur in capillaries or superficial blood vessels burst. It takes some time for that to develop; one hour wouldn't be sufficient.

49 Q. A blow, doctor, usually isn't a blow in the pugilistic region, in the chest or in the neighborhood of the heart—that has to be very severe in order to dilate the heart on an occasion of that kind?

A. It has been reported that one blow knocked a man out and he died from what you state, dilatation of the heart.

Q. But this man didn't drop dead at the time of his alleged trauma on the dock, but an hour afterwards on the way home after climbing flights of stairs on the elevated structure and walking a considerable distance to arrive at the elevated structure——

A. (Intg.) The blow in a prize fight——

Q. (Intg. and continuing) In other words, he walked from the East River to Third Avenue Railroad along 34th Street, and climbed the stairway and died on his way downtown.

A. As to the blow of the prize fighter, the blow is very severe and most often doesn't strike on the side of the chest or the medial line, being a blow of the solar plexus.

Q. You have no evidence before you as to where the exact trauma was sustained?

A. No, I haven't—on the chest, it says. Some of his fellow workmen saw him fall from a height of eight feet on his chest and said that the deceased complained of pain immediately in the region of the chest—I don't know on which side.

Q. Would the history such as incorporated in your records, that the father experienced heart trouble, diagnosis being the same as appears in this case of the deceased——

A. (Intg.) The same thing—because you may have 50 hereditary tendency, or you may have hereditary cardiac defect; but it is suffice to say that the man did have cardiac lesion, but it doesn't make any difference whether hereditary or acquired. I took it for granted that the man did have cardial

vascular disease with good compensation, because if he wouldn't hav
had good compensation he couldn't have worked as it says here.

Q. Isn't it a fact, doctor, that acute dilatation of the heart
always brought on by physical exertion and not by trauma th
would permit a man to live for an hour afterwards and do thing
in the accustomed way, such as leaving the place of his employmen
walking several blocks and up the elevated stairway of three flight

A. I stated before, that acute dilatation of the heart can
brought on emotionally without any injury. Tell a certain ma
bad news, tell him of the death of some important member of th
family, and he will drop dead if he has a bad heart. Any em
tional shock can cause dilatation of the heart. Fainting is dila
tion, only it is not sufficient to kill—and may kill. A person wh
suddenly falls over in consequence of an attack of syncope has dil
tation and, secondly, has anemia of the brain; that is why h
becomes unconscious; he may recuperate within ten minutes, bu
the shock is very severe he will die. Acute dilatation as known
the term "medicine"—surgical shock—generally is worse at th
time when it occurs. I may call your attention—you have ask
me about acute dilatation showing itself manifest immediatel

It does, but it need not show its severity at once. There a
51 very serious injuries on record where men have worked f
hours at a time and then suddenly dropped dead

Q. In a case of that kind would you still connect the origin
trauma with the subsequent dilatation of the heart hours afterward
or would you attribute it to the excessive physical exertion in h
vocation for hours afterwards?

A. They have been connected because they found the eviden
then. A man has shock, bleeds in his chest, walks to the station
three miles with hemorrhage in his chest, and as he reached th
place he drops dead—now, he walks three miles to the place—

Q. (Intg.) We have no witness in this case that saw any sig
of external violence in the chest or in the site of the trauma?

A. I started in by saying I placed this entire thing on a hy
thetical question.

Q. No autopsy made in this case to confirm the diagnosis?

A. I have covered, that autopsy in this case would have been v
important and helpful. I have covered all those points.

Commr. Lyon: Now, do you want to get this man who wrote
letter?

Mr. Willoughby: I think we should adjourn it; we will endeav
to get him.

Chairman Mitchell: Adjourned three weeks. Give all par
notice.

52 State Industrial Commission.

Hearing of the Commission June 16, 1919 (at New York Office), Before Commissioner Lyon

Case 59466

GIUSEPPE INSANA (Death Case): NORDENHOLT CORPORATION, Employer; TRAVELERS INSURANCE CO., Ins. Carrier.

For the purpose of making the report of Dr. Lewy of the Commission's Medical Department appear on the records, and for the further purpose of giving employer and insurance carrier the opportunity of cross-examining Dr. Lewy if desired.

Mr. E. A. Willoughby representing insurance carrier.

Mr. Willoughby: We received a letter from the missing witness that the man received no accident at the place of employment, but died of other causes.

Commr. Lyon: What has been done with the case—has there been any decision?

Clerk Fitzpatrick: There has been an award made to the mother.

Commr. Lyon: No action.

53 *Report of Dr. Lewy.*

State of New York,

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Bureau of Claims.

Medical Division.

In re Case No. 59466.

Giuseppe Insana, Dec'd.
81 New Street, New York City.
Travelers.

5/5/18.

To render an opinion whether cause of death is a sequence of the alleged injury, such can only be answered on a hypothetical question, as there is no medical evidence whatsoever of the claimant's condition prior to his sudden death which occurred on an elevated train. The evidence as to the description of the injury is very contradictory. Some of his fellow workmen saw him fall from a height

of about eight feet on his chest and said that the deceased compla
of pain immediately in the region of his chest. The employers
during the cross-examination that they have no evidence nor
scription of accident and only heard of his death the following
If we refer to the work which claimant performed, on the day o
alleged accident and if we also refer to the cause of death, nam
chronic valvular disease followed by acute dilatation, such
54 jury as described, namely, the heavy work for many h
preceding the fall and the fall itself could have caused a di
tion of the heart with a previous diseased endocardium. If the
siding Commissioner believes that the accident has occurred, the
is compensatable from a medical point of view.

DR. R. LEW

Jan. 18, 1919.
BI.

Autopsy in such case would be very important and helpful.
The Medical Bureau hereby approves a period of — week
days' disability from date of injury.
(Signed) DR. R. LEW

Report of A. M. De Luca.

Commission Letterhead.

New York, November Twenty-fifth, 191

In re Case No. 59466.
Guiseppe Insana, Decd.
The Nordenholt Corporation.

Mr. Samuel Kaltman,
Building.

DEAR SIR:

In accordance with your instructions, I have interviewed the
nesses in the above captioned case.

55 Paolo Laspina of No. 116 Madison Street, New York
stated as follows:

"On the 15th day of May, 1918, I was employed as longshore
by the Nordenholt Corporation, unloading a cargo at their pi
Brooklyn, New York. The cargo consisted of sacks of hard
cement, each sack weighing 145 pounds. These sacks were ha
from the ship to a distance of eighteen feet on the pier, where
seppe Insana, decedent and I piled them up. We were standing
pile eight feet high and while reaching down for another sack, w
we were to deliver to a higher pile above us, the decedent slippe
the edge of the pile and fell to the ground striking on his chest.
Rocco Bennerdello, and I went to his assistance and helped hi

his feet. In answer to my inquiry as to whether he were hurt, he told me that he felt a sharp pain around his heart, despite, which fact, he was able to walk a short distance to the boat, which was to carry him back to New York. It was five o'clock, by this time, and I started to "check up" during which confusion, I lost sight of Insana and did not see him again that evening.

"I had known the decedent intimately for a period of two years prior to his death, during which time, he always enjoyed splendid health and at no time, did he complain of any trouble about his heart.

Rocco Bennerdello of No. 13 Monroe Street, New York City, made the following statement:

"On the 15th day of May, 1918, I was employed as a longshoreman by the Nordenholt Corporation unloading a cargo at their pier in Brooklyn, N. Y. At about five minutes of five o'clock on that day, I saw Giuseppe Insana, decedent, fall from a pile of sacks
56 of cement, about eight feet high. Laspina and I assisted him to arise, I asked him if he were hurt and he said that he suffered great pain around his heart. At this time, we quit work and after "checking" our numbers, we went to take the boat home and alighted at 23rd Street Ferry, New York City. Thence we proceeded to Second Avenue elevated railway and boarded a southbound train. As we reached the 19th Street station, the decedent showed signs of distress and threw himself back on his seat. The train conductor noticed his suffering and as we reached the 14th Street Station, he helped me to conduct Insana into the station. There we tried to revive him, but our efforts were of no avail. The doctor came about forty-five minutes later and pronounced him dead."

I also interviewed Salvatore Pisano, another eye witness of No. 93 Market Slip, New York City, who corroborated in every detail, the above statements.

Respectfully submitted,

A. M. DE LUCA,
Investigator.

57 *Letter to Police Headquarters.*

September 3, 19

Please address reply to H. G. Mueller.

Case No. 59466.
Giuseppe Insana, deceased.
The Nordenholt Corporation.

Police Headquarters,
240 Centre Street,
New York City.

GENTLEMEN:

We would be pleased to have you furnish this Commission
transcript of your records in the case of Giuseppe Insana wh
found dead on the south bound station of the elevated railroad
at 14th Street and 3rd Avenue, New York City, on May 15th.

Thanking you in advance for your kind attention to this
we are,

Respectfully yours,
STATE INDUSTRIAL COMMISS
DIVISION CLAIMS.

——— ———,
Chief.

H. G. M. G. O. R.

58 *Letter from J. C. Hackett.*

City of New York,

Police Department.

Office of the Commissioner.

September 12, 1

Mr. H. G. Mueller,
State Industrial Commission,
230 Fifth Avenue, New York.

DEAR SIR:

The letter of September 3rd, signed by Mr. James P. Rich
addressed to this department, and requesting information rel
the case of Giuseppe Insana who was found dead on the south
station of the elevated railroad, 14th Street and Third Ave
May 15, 1918, has been received.

In reply, the Police Commissioner directs me to inform y
at 6 P. M., May 15, 1918, Joseph Inzana, 146 Cherry Street, 2
Italy, laborer, died suddenly on the south bound station of

vated railroad, 14th Street and Fifth Avenue. Pronounced dead by Dr. Crystal, Bellevue Hospital. Case reported by Patrolman Charles Flanagan, No. 3224 21st Precinct. Nothing suspicious. Witnesses: Rocco Bennerdello, 13 Marion Street, and Palo Facobello, 40 Hamilton Street. Found on deceased $2.43 in cash, 1 pocket knife, 1 card case, 1 zone pass, 4 keys, 1 brass check, and 1 handkerchief. Property claimed by mother. Commanding office, Medical Examiner and friends notified.

Very truly yours,

J. C. HACKETT,
Secretary of Department.

59 *Notice of Decision.*

State of New York,

Department of Labor,

State Industrial Commission,

Capitol, Albany.

New York Office: 230 Fifth Avenue.

New York, May 28th, 1919.

Re Death case No. 59466.
Guiseppe Insana,
Nordenholdt Corp.
Date of Acc. May 15th, 1918. Attention of Mr. E. A. Willoughby.

To the Travelers Ins. Co.,
30 East 42nd Street,
New York City:

To the Nordenholt Corp.,
81 New Street,
New York City:

To Mr. Sebastian Insana,
44 Monroe Street,
New York City:

The above case was presented to the Commission in Session on Monday, May 26th, 1919, for the purpose of making the report of Dr. Lewy appear on the records of the case, and for the further purpose of giving the employer and Insurance Carrier the opportunity of cross-examining Dr. Lewy, if they so desire.

Action was deferred at that time until Monday, June 16th, 1919, at 11 A. M.

60 The parties in interest are hereby requested to be pres
or represented at this hearing, which will take place at
230 Fifth Avenue, New York City, on the 19th Floor, in Room
1900A.

Very truly yours,

STATE INDUSTRIAL COMMISSION
BUREAU OF WORKMEN'S COM-
PENSATION.
JAS. F. FITZPATRICK,
Clerk of Session.

J. F. F. B. B.

Notice of Award.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue

Date: February 14, 191

Case 59466
Guiseppe Insana, deceased.

Mrs. Sebastine Insana, 45 Monroe St., City, Employee, and Nor
holt Corporation, 81 New Street, City, Claimant, and Trave
Ins. Co., 30 E. 42nd St., City, Insurance Carrier.

This is notice that at a meeting of the State Industrial Comm
sion held 2/3/19 a decision and award of compensation was m
in the above case as follows:

Sebastiana Insana, mother, born 11/19/69 25% 5.77.

The employer and insurance carrier is hereby directe
61 accordance with the provisions of the Workmen's Compen
tion Law, to pay the above award in the following manne

To Mrs. Sebastiana Insana, 94 Market St., City, $100 for fune
expenses.

To Mrs. Sebastiana, 94 Market St., City, in sums as follo
$219.26 at once for a period from 5/15/18 to 2/5/9, and there
$11.54 bi-weekly installments periodically in accordance with
method of payment of wages of the employees at the time of in
or death.

The above copy of the decision and award is sent to you pursu
to sections 20 and 23 of the Compensation Law.

Yours truly,

STATE INDUSTRIAL COMMISSION
JOHN MITCHELL,
Chairman.

JAS. P. RICHARDSON,
Chief of Claims.

62 *Conclusions of Fact, Ruling of Law, and Award.*

State Industrial Commission.

Death Case No. 59466.

In the Matter of the Claim for Compensation under the Workmen's Compensation Law Made by SEBASTIANA INSANA, Mother of Guiseppe Insana, on Account of the Death of Guiseppe Insana, Deceased, against NORDENHOLT CORP., Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

This claim came on for hearing before the State Industrial Commission at its office, 230 Fifth Avenue, New York City, on December 18, 1918, March 12, 1919; May 26, 1919; June 6, 1919, and June 16, 1919.

Appearances:

Bernard L. Shientag, Esq., Counsel to the State Industrial Commission.

Amos H. Stephens, Esq., Attorney for employer and insurance carrier.

Claimant in person

All the evidence submitted before this Commission having been heard and duly considered, the Commission makes its Conclusion of Fact, Ruling of Law, Award and Decision, as follows:

63 Conclusions of Fact.

1. On May 15, 1918, the day on which Guiseppe Insana sustained the injuries which resulted in his death on the same day he resided at 146 Cherry Street, New York City, and was employed as a longshoreman by Nordenholt Corp. with plant and principal place of business at 81 New Street, New York City; said company being engaged in business as stevedores.

2. On May 15, 1918, while the said Guiseppe Insana was engaged in the regular course of his employment, and while piling bags of hard red cement, weighing about 145 pounds, at a pier of his employers in Brooklyn, New York, the said Guiseppe Insana while standing on a pile of the said bags, about 8 feet high, and while reaching down for another bag which his fellow workmen were to deliver to a higher pile, which was above the deceased, the deceased slipped off the edge of the pile and fell to the ground, striking on the left side of his chest thereby causing him to be affected with a very sharp pain around the heart.

The accidental injuries were sustained by the said Guiseppe I sana about 4.55 P. M. on May 15, 1918, and at 5 P. M. he quit wor and proceeded to his home; at about 6 P. M. Guiseppe Insa suddenly died on the southbound station of the Second Avenue Ra road at 14th Street and 1st Avenue, New York City; the cause of d death being acute cardiac dilatation as a primary case, together w chronic valvular disease as a contributing cause. The ac-
61 dental injuries which the said deceased sustained while wor ing for his employer when he fell from the pile of bags to th floor were the activating cause of his death, and his death was direct result of the injuries sustained by him while engaged in t regular course of his employment.

3. The average weekly wage of Guiseppe Insana was the sum $23.08.

4. The injuries which resulted in the death of Guiseppe Insa were accidental injuries and arose out of and in the course of his em ployment.

5. Written notice of injury and death was not given to the em ployer within the time prescribed by section 18 of the Compensati Law, but neither the employer nor insurance carrier was prejudice by the lack of such notice.

6. Guiseppe Insana left him surviving no wife or child under th age of 18 years, but left surviving Sebastiana Insana, depende mother, aged 49 years, dependent upon him at the time of said ac dent, the claimant herein.

Ruling of Law

This claim comes within the provisions of chapter 67 of the Co solidated Laws, being chapter 816 of the Laws of 1913, as re-enact and amended by chapter 41 of the Laws of 1914, and amended b chapter 316 of the Laws of 1914, and as further amended by th Laws of 1915, 1916 and 1917, known as the Workmen's Compens tion Law.

Award.

Award of compensation is hereby made against Nordenh
65 Corporation, employer, and The Travelers Insurance Co pany, insurance carrier, to Sebastiana Insana, depende mother, aged 49 years, at the rate of $5.77 weekly during depe ency; and to Mrs. Sebastiana Insana in the sum of $100 on accou of the funeral expenses of Guiseppe Insana, deceased.

Decision.

The failure to give written notice of injury and death to th employer within the time prescribed by section 18 of the Compens

tion Law is hereby excused on the ground that neither the employer nor insurance carrier was prejudiced by the lack of such notice.

Dated June 16, 1919.

STATE INDUSTRIAL COMMISSION.
FRANCES PERKINS,
EDW. P. LYON,
HENRY D. SAYER,
Commissioners.

Affidavit of No Opinion.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

William B. Davis, being duly sworn, deposes and says that he is an attorney at law associated with Benjamin C. Loder, the attorney for the appellants herein; that he is informed and
66 believes that no opinion was rendered by the Commission.

WILLIAM B. DAVIS.

Sworn to before me this 15th day of April, 1920.

W. C. OLSEN,
Notary Public, Westchester County.

Certificate filed in New York County.

Certification of Record.

I, Edward W. Buckley, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers (except the Statement Under Rule 41) with the respective originals thereof on file in the office of the State Industrial Commission, and that the same are true and correct copies of said originals, and of the whole thereof, and that said papers constitute all of the papers and proceedings herein, including the evidence, which were before said State Industrial Commission in relation to the foregoing claim.

In witness whereof, I hereunto set my hand and the official seal of the State Industrial Commission on the 15th day of April, 1920.

E. W. BUCKLEY,
Secretary State Industrial Commission.

67 *Order Settling and Filing Case.*

It is hereby ordered that the foregoing printed record is hereby settled as and for the record before the Appellate Division of the Supreme Court, Third Department, upon the appeal herein and the

same is hereby ordered on file in the office of the Clerk of the Appellate Division of the Supreme Court, Third Department.

Dated, New York, April 15, 1920.

EDWARD F. BOGH,
For the State Industrial Commission.

Decision of Appellate Division for Affirmance.

In the matter of the claim of Guiseppe Insana for compensation under the Workmen's Compensation Law; State Industrial Commission, respondent, against Nordenholt Corporation, employer; The Travelers Insurance Company, insurance carrier, appellants.

Award unanimously affirmed. Opinion by Kiley, J.

68 *Opinion of Kiley, J., for Affirmance.*

Supreme Court, Appellate Division, Third Department.

SEBASTIANA INSANA, Claimant, and STATE INDUSTRIAL COMMISSION, Respondents, against NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Appellants.

Argued May Term, 1920.
Decided July Adjourned Term, 1920.

John M. Kellogg,
Presiding Justice.

John Woodward,
A. V. S. Cochrane,
Henry T. Kellogg,
Michael H. Kiley,
Associate Justices.

Appeal from an Award Made to the Claimant and Entered in the Office of the said Commission on the 3rd of February, 1919.

Hon. Charles D. Newton, Attorney-General.
E. C. Aiken (of Albany, N. Y.), Bernard L. Shientag
69 (New York City), of counsel, for respondents.
Benjamin C. Loder (New York City), for appellants.

KILEY, *J.*:

The appellants contend that the notice required by statute was not given to the employer and that death was caused by acute cardiac dilatation, chronic valvular disease of the heart, and that the accident alleged to have happened to the deceased, in no way, contributed toward such fatality. On May 15, 1918, Giuseppe Insana with others, was working for the appellant, employer, at its pa

in Brooklyn, N. Y. They were unloading a cargo of sacks of hard red cement, each sack weighing 145 pounds. Five minutes before quitting time Giuseppe fell seven or eight feet from a pile of these sacks, striking his left breast upon either, one of the sacks or upon the platform upon which the sacks were piled. He was helped up by his fellow workmen, complained that he had slipped, and fell and hurt himself in the region of the heart. He walked to the ferry and up a flight of stairs to the elevated railroad and died in the train. The time keeper took the names of those there. The assistant foreman of the employer says he hired the deceased to work the day he was injured and that he heard of his injury before he left for home. He said he did not tell anybody because his fellow workmen said they would take it up next morning. Superintendent Marra of the employer corporation testified that June 27th was the first knowledge he had of the accident, and that was acquired through a representative of the insurance carrier, appellant herein, for whom he made an affidavit. He was then asked this question: "That is the first knowledge you had there was a claim? A. Yes, it was. Of course, the next day after the man died, they told me on the job he died on his way home. I didn't pay no attention to it." It will be noted that the word "claim" is used, not accident. Again, "He never told you anything about an accident? A. No, sir." This evidence is not satisfactory as to the absence of knowledge, but earlier in his testimony he creates a feeling that he had knowledge as soon as the next day. "No accident whatever was reported at the time, until the next day we got back to work and some of the employes told me the man died on his way home on the train." His examination was to the effect that he did not have notice, not that he did not have knowledge. It is obvious, whether consciously or not, that this evidence fitted the provisions of section 18, requiring affirmative notice, as found in said section before the paragraph commencing with the words "the failure to give notice of injury or notice of death," etc. The statute extending the time in which to give notice from ten to thirty days took effect May 13, 1918, two days before this injury occurred. The employer had such knowledge as is contemplated by the last paragraph of section 18 of the Workmen's Compensation Law. As to whether this injury activated a previous bad condition of the heart and thereby contributed to the sudden taking off of this man, was a question fact for the Commission. Some medical testimony given is to the effect that such injury might produce a condition that might be fatal and of which this instance is illustrative. Appellants rely on Nester v. Pabst Brewing Co., 191 App. Div. 312. I cannot escape the conclusion that the circumstances and facts are different in the two cases. Nester dislocated his shoulder on June 1, 1918, and lived until July 21, 1918. His injury was not in the region of the heart; a dislocated shoulder and contusions of the skin may be had without any shock; a twist of the arm may dislocate a shoulder; a scam in the trousers may abrase the skin, a ball thrown by a boy may produce a painful contusion. The death certificate

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indicated, nothing more, that Nester died of heart disease ("chro cardiac valvular"). He was under the care of a physician; lived fifty-one days after the injury, and his physician swore t he never had heart disease. In the case here considered the sh must have been severe, Insana slipped and fell seven or eight fe striking a hard substance, either cement sack or the floor of t platform and was dead within an hour thereafter. His mother sw he never had any sickness, any heart disease. She did not kn The physician, Dr. Lewy, was called and testified from the fact presented by the record that in his opinion he had, and that the jury was such as might hasten death. I do not think (191 App D 312, supra), is controlling here. It would seem that
72 sections 21 and 68 of the Compensation Law, is to be accor any vitality, they apply to the facts in this case.

The award should be affirmed.

Order of Affirmance.

At a Term of the Appellate Division of the Supreme Court in a for the Third Department Held at the Court House, in the C of Albany, N. Y., Commencing on the 4th Day of May, 1920

Present:

Hon. John M. Kellogg,
Presiding Justice.
Hon John Woodward,
Hon. A. V. S. Cochrane,
Hon. Henry T. Kellogg,
Hon Michael H. Kiley,
Associate Justices.

In the Matter of the Claim for Compensation under the Workm Compensation Law Made by SEBASTIANA INSANA, Mother Guiseppe Insana, on Account of the Death of Guiseppe Ins against NORDENHOLT CORPORATION, Employer, and T TRAVELERS INSURANCE COMPANY, Insurance Carrier, Appella

73 The above named Nordenholt Corporation and The Tr elers Insurance Company having appealed from the award the State Industrial Commission entered in the office of said C mission on the 16th day of June, 1919, whereby compensation awarded to the above named Sebastiana Insana, dependent mot aged 49 years, at the rate of $5.77 weekly during dependency; to Mrs. Sebastiana Insana in the sum of $100 on account of funeral expenses of Guiseppe Insana, deceased; and said appeal h ing come on to be heard in this court, and having been argued William B. Davis, Esq., of counsel for the appellants, and E. Aiken, Deputy Attorney General, for the State Industrial Comm sion, and due deliberation having been had thereon:

Now, on motion of Charles D. Newton, Attorney General, at ney for the State Industrial Commission, it is

Ordered that the award of the State Industrial Commission appealed from be and the same is hereby unanimously affirmed.

A copy.

JOSEPH H. HOLLANDS, *Clerk.*

[L. S.] JOSEPH H. HOLLANDS, *Clerk.*

Decision on Motion for Reargument.

September 22, 1919, motion for reargument granted and case set at the head of the compensation appeals calendar for the November Term.

71 *Decision of Appellate Division Following Reargument.*

In the Matter of the Claim of GIUSEPPE INSANA for Compensation under the Workmen's Compensation Law, STATE INDUSTRIAL COMMISSION, Respondent, against NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Appellants.

Award reversed and claim dismissed on the authority of Matter of Keator v. Rock Plaster Mfg. Co., 224 N. Y. 54; and Matter of Anderson v. Johnson Lighterage Co., 224 N. Y. 539.

All concur.

Order of Reversal.

At a Term of the Appellate Division of the Supreme Court in and for the Third Department Held at the Court House, in the City of Albany, New York, Commencing on the 9th Day of November, 1920.

Present

Hon. John M. Kellogg,
Presiding Justice.

Hon. John Woodward,
Hon. A. V. S. Cochrane,
Hon. H. T. Kellogg,
Hon. Michael Kiley,
Justices.

75 In the Matter of the Claim of SEBASTINA INSANA for Compensation under the Workmen's Compensation Law for the Death of GIUSEPPE INSANA, STATE INDUSTRIAL COMMISSION, Respondent, against NORDENHOLT CORPORATION, Employer; THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Appellants.

The avove-named Nordenholt Corporation and The Travelers Insurance Company having appealed from the awards of the State In-

dustrial Commission entered in the office of the said commission on the third day of February, 1919, and on the fifth day of March 1920, whereby compensation was awarded to the said Sebastina Insana, and said appeal having come on to be heard in this court and having been argued by E. C. Sherwood, Esq., of counsel for the appellants and the Hon. E. C. Aiken, Deputy Attorney-General, of counsel to the State Industrial Commission, and due deliberation having been had thereon,

Now on motion of Benjamin C. Loder, attorney for Nordenhof Corporation and The Travelers Insurance Company, it —

Ordered that the award of the State Industrial Commis-
76 appealed from, be and the same hereby is reversed and the claim dismissed.

JOSPEH H. HOLLANDS,
Clerk

A copy.
[L. S.] JOSEPH H. HOLLANDS, *Clerk*.

Notice of Appeal to Court of Appeals.

Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of GUISEPPE INSANA for Compensation under the Workmen's Compensation Law against NORDENHOF CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier, Respondent. STATE INDUSTRIAL COMMISSION, Appellant.

SIRS:

Please take notice that the State Industrial Commission hereby appeals to the Court of Appeals of the State of New York from the order duly made and entered in the office of the Appellate Division of the Supreme Court, Third Judicial Department, at a Term
77 commencing on the 9th day of November, 1920, reversing the award in said matter and dismissing the claim, and said State Industrial Commission appeals from each and every part of said award.

Dated, March 4th, 1921.

Yours etc.,

CHARLES D. NEWTON,
Attorney-General,
Attorney for the State Industrial Commission.

Office and P. O. Address, Capitol, Albany, N. Y.

To

Benjamin C. Loder, Esq.,
Attorney for Respondents,
30-12 E. 12nd St., New York City, and

Joseph H. Hollands, Esq.,
Clerk of the Appellate Division.

Certification of Record.

I, E. W. Buckley, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers (except the statement under Rule 41) with the respective originals thereof on file in the office of the State Industrial Commission, and that the same are true and correct copies of said originals and of the whole thereof, and that the same constitute the papers which were before the Industrial Commission, together with the opinions
78 of the Appellate Division, decisions, orders of affirmance and of reversal and notice of appeal.

In witness whereof, I hereunto set my hand and the official seal of the State Industrial Commission on the 31st day of March, 1921.

E. W. BUCKLEY,
Secretary State Industrial Commission.

79 *Decision of Court of Appeals, October 25, 1921.*

Claim of INSANA.

Order affirmed with costs against Industrial Commission: no opinion: all concur except Cardozo, J., dissenting.

Remittitur.

STATE OF NEW YORK, ss.:

Court of Appeals.

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 20th day of October in the year of our Lord one thousand nine hundred and twenty-one before the Judges of said Court.

Witness The Hon. Frank H. Hiscock, Chief Judge, presiding.

R. M. BARBER,
Clerk.

Remittitur, October 26, 1921.

In the Matter of the Claim of GUISEPPE INSANA for Compensation, etc.

Be it remembered, That on the 25th day of April in the year of our Lord one thousand nine hundred and twenty-one, State Industrial Commission, the appellant in this cause, came here into the Court of Appeals, by Charles D. Newton, Attorney-General, its attorney, and filed in the said court a Notice of Appeal and re-
80 turn thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Nordenholt Corporation, Employer & ano., etc., the respondents

in said cause, afterward appeared in said Court of Appeals by Benjamin C. Loder, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. E. C. Aiken, of counsel for the appellant, and by Mr. E. C. Sherwood, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs against the Industrial Commission.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, there to be proceeded upon according to law.

Therefore, It is considered that the said order be affirmed with costs against the Industrial Commission, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted unto the Appellate Division, Third Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices
81 thereof, etc.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

Albany, Oct. 26, 1921.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.]

R. M. BARBER,
Clerk.

Order on Remittitur.

At a Term of the Appellate Division of the Supreme Court in and for the Third Department Held at the Court House, in the City of Albany, N. Y., Commencing on the 15th Day of November, 1921.

Present:

Hon. John M. Kellogg,
Presiding Justice.

Hon. A. V. S. Cochrane,
Hon. Henry T. Kellogg,
Hon. John Woodward,
Hon. Charles C. Van Kirk,
Associate Justices.

82 In the Matter of the Claim of SEBASTIANA INSANA for Compensation under the Workmen's Compensation Law for the Death of Guiseppe Insana, State Industrial Board, Appellant, against Nordenholt Corporation, Employer; The Travelers Insurance Company, Insurance Carrier, Respondents.

The State Industrial Commission, predecessor to the above-named State Industrial Board, having appealed to the Court of Appeals of the State of New York, from the order of the Appellate Division of the Supreme Court, Third Judicial Department, made herein and entered in the office of the clerk of the said court at a Term thereof commencing on the 9th day of November, 1920, reversing the award of the State Industrial Commission herein which was entered in the office of the said commission on the 3rd day of February, 1919.

Whereupon the said Court of Appeals having heard this appeal argued by Mr. E. C. Aiken, of counsel for the appellant, the State Industrial Board, and by Mr. E. C. Sherwood, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme
83 Court appealed from herein be affirmed, with costs, against the Industrial Commission, and it was also further ordered that the record and proceedings in the Court of Appeals be remitted to the Appellate Division of the Supreme Court, there to be proceeded upon according to law, and said remittitur having been filed in this court,

Now, on motion of Benjamin C. Loder, attorney for the said Nordenholt Corporation and said The Travelers Insurance Company, it is

Ordered, that the said order and judgment of the Court of Appeals be and the same hereby is made the order of this court, and that the order entered herein at a Term of this court commencing on the 9th day of November, 1920, be and the same hereby is affirmed, with $119 costs, to be paid by the State Industrial Board.

JOSEPH H. HOLLANDS,
Clerk.

Opinion of Crane, J., in Claim of Newham.

Court of Appeals.

In the Matter of the Claim of NICHOLAS NEWHAM for Compensation under the Workmen's Compensation Law, STATE INDUSTRIAL COMMISSION, Respondent, against CHILE EXPLORATION CO., Employer and Self-Insurer, Appellant.

This is an appeal by the employer from an order of the
84 Appellate Division, Third Department, affirming an award of the State Industrial Commission by a divided court.

Carrol A. Wilson, R. C. Klugescheid and George O. Redington (Carroll A. Wilson, of counsel), attorneys for appellant.

Charles D. Newton, Attorney-General (E. C. Aiken, of counsel), attorney for the State Industrial Commission.

Wood, Molloy & France (Francis X. Hennessy, of counsel), attorneys for claimant-respondent.

CRANE, *J.*:

We have held in Matter of Doey v. Howland Co. (224 N. Y. 30) and in Matter of Anderson v. Johnson Lighterage Co. (224 N. Y. 539) and in Matter of Keator v. Rock Plaster Manufacturing Co. (224 N. Y. 540) that if the employee was engaged at the time of his injury in the performance of a maritime contract the State did not have jurisdiction of the matter and the Workmen's Compensation Law did not apply. This is the deduction which we have made from the cases of the Southern Pacific Co. v. Jensen (244 U. S. 205) and Knickerbocker Ice Co. v. Stewart (253 U. S. 149).

It remains, therefore, for us to determine whether or not, in this case, Newham was working under a contract of a maritime nature.

"Whatever is done to operate a ship, to aid her physically in the performance of her mission, viz., to take freight or passengers, to carry freight or passengers, to unload freight or passengers, and to preserve her while so doing, is a maritime service." (Robinson et al. v. The C. Vanderbilt (86 Fed. 785).

85 It has been held that a stevedore's contract of employment is a maritime contract (Atlantic Transport Co. v. Imbrovek, 225 U. S. 700). The weighing, inspecting and measuring of the cargo of a vessel constitute maritime service. (Constantine v. The River Queen, 2 Fed. 731.) See Gills v. The Mattie May, 47 Fed. 69. In De Lovio v. Boit, 2 Gallison's Reports, 398, Judge Story said admiralty had jurisdiction of "all controversies respecting freight; of damages to goods shipped; of the wages of mariners; of the partition of ships by public sale; of jettison; of commissions or bailments to masters and mariners; of debts contracted by the master for the use and necessities of his ship; of agreements made by the master with merchants, or by merchants with the master; of goods found on the high seas or on the shore; of the armament or equipment of ships, gallies or other vessels; and generally of all other contracts declared in the customs of the sea."

Newham, the claimant here, while not a stevedore, was performing services of such a similar nature that his employment was that of maritime service.

The Chili Exploration Company was engaged in loading the steamship Maipo to carry freight to Valparaiso and other ports on the Western coast of South America. Patane and Company were stevedores doing the work, having been employed by the captain of the ship. The ship belonged to the Chilean Government and the captain was given the sole right to employ the stevedore.

86 Arne & Company was employed by the Chili Exploration Company to do the checking and tallying of the cargoes on the dock, which constituted no part of the stevedoring. The work consisted of checking the freight as it was delivered at the dock from the trucks or lighters, inspecting the packing and noting the number and quantity of the several parcels or kinds of freight. The Chili Exploration Company was naturally interested in having

the freight packed safely and in such a way that it could be easily discharged at the ports in turn and further in having all the space used to its utmost carrying capacity. To accomplish these results required experience and stowage ability. The stevedores, not being the servants or contractors of the charterer could not be expected or relied upon to consider these matters as fully as would a representative employed by the company. Arne & Company, the checker, had nothing to do with the sufficiency or safety of loading the ship. Under these circumstances Newham was employed by the Chili Exploration Company to look after these matters.

I will assume for the purpose of this point, that he was employed, although the matter has been seriously disputed upon the argument of the appeal, it being claimed by the appellant that there is no evidence to show that he was an employee of the Chili Exploration Company. Assuming for the present however, that he was, his work consisted in supervising the stevedoring work, so as to see that the cargo was loaded safely with the least risk for breakage in transit;
in such a way that the merchandise could be readily reached
87 as the ports of destination were entered and that the utmost
use was made of the space. Newham was also given charge of the lighters to see what was on them and also to determine a suitable place to put them. While he had no authority over the stevedores yet if he saw something wrong it was his duty to report the matter to Mr. Edwards of Arne & Company, who in turn would report it to Mr. Talbot, officer of the defendant.

Mr. Talbot testified

"We wanted him (Newham) to oversee the work done on the steamer, in case anything was not going right that he could report it to Mr. Edwards, and Mr. Edwards could report it to us. * * * We wanted the stuff looked out for, to see that none of the stuff was broken up or not properly placed in the steamer and I wanted somebody there all the time to have a report given to me if goods were broken or not properly stowed or improperly placed in the steamer and I wanted somebody there all the time that could report it to me so I could take it up with the captain of the steamer * * * a general overseeing."

While Newham had no control over the ship or the cargo or the stevedores, we did have control over the lighters and was on the way to give directions regarding the removal of a lighter at the time he was hurt.

Furthermore his report regarding the placing of the freight would or could result in Talbot's direction to the captain which in turn
might result in a shift of the cargo. Under all these circum-
88 stances we think that Newham's work was of a maritime nature, similar to that of a foreman of stevedores, and that what he did in the course of his employment might and could result in either safety or injury to the ship or cargo. Surely he had direction over the lighters, the handling of which might have resulted in damage to ship or cargo. The employment of Newham was, there-

fore, a maritime contract and the Workmen's Compensation La by our rulings above made does not apply.

It has been said that the appellant here has waived the quest of jurisdiction by agreeing to bring before the Appellate Cou solely the question of Newham's employment. It is elementary th no agreement, waiver or stipulation could confer upon the Sta of New York or its Courts or Commissions, jurisdiction which does not and cannot possess.

Judgment of the Appellate Division reversed. The award mu be set aside and the claim dismissed, with costs in all the courts.

Certification of Record.

STATE OF NEW YORK,
County of Albany, ss:

I, Joseph H. Hollands, clerk of the Supreme Court of the State New York, Appellate Division, Third Department, do hereby cert the writing hereto annexed to be a true, complete and perfect co of the record and of all proceedings in case of Guiseppe Insana agai Nordenholt Corporation, Employers, and The Travelers Insura Company, Insurance Carrier, as fully as the same remain
89 file and of record in my office, except as to opinion in cla of Newham.

In Witness Whereof I hereunto subscribe my name and affix t seal of said court this 15th day of November, 1921.

[Seal of Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk.

90 Supreme Court, Appellate Division, Third Department.

THE STATE INDUSTRIAL COMMISSION, Petitioner, in the Matter of t Claim of SEBASTIANO INSANA for Compensation under the Wo men's Compensation Law against NORDENHOLT CORPORATION, E ployer; THE TRAVELERS INSURANCE COMPANY, Insurance Carr

Albany, N. Y., January 3, 192

It is hereby stipulated that the transcript of record heretofore tra mitted and on file with the clerk of the Supreme Court of the Un States may be taken as a return to the writ of certiorari granted the United States Supreme Court and dated the 22nd day of D cember 1921.

CHARLES D. NEWTON,
Attorney General
E. CLARENCE AIKEN,
Of Counsel for the State Industrial Commission
BENJAMIN C. LODER,
Attorney for Defendants-Respondents

A copy.

[Seal of Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS, *Clerk.*

91 [Endorsed:] 625. Supreme Court, Appellate Division, 3rd Dept. The State Industrial Commission, Petitioner, in the Matter of the Claim of Sebastiano Insana for Compensation under the Workmen's Compensation Law, against Nordenholt Corporation, Employer, The Travelers Insurance Company, Insurance Carrier. Copy. Stipulation.

92 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court, Appellate Division, Third Department, of the State of New York, Greeting:

Being informed that there is now pending before you a suit in which Nordenholt Corporation, Employer; The Travelers Insurance Company, Insurance Carrier, are appellants, and State Industrial Commission is respondent, which suit was removed into the said Supreme Court by virtue of an appeal from the State Industrial Commission, and we, being willing for certain reasons that the said cause and the record and proceedings thereon should be certified by the said Supreme Court and removed into the Supreme Court

93 of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-second day of December, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

94 [Endorsed:] File No. 28,580. Supreme Court of the United States, No. 625, October Term, 1921. The State Industrial Commission of the State of New York vs. Nordenholt Corporation et al. Writ of Certiorari. Filed Jan. 3, 1922.

95 [Endorsed:] File No. 28,580. Supreme Court U. S., October Term, 1921. Term No. 625. State Industrial Commission of N. Y., Petitioner, vs. Nordenholt Corporation et al. Writ of certiorari and return. Filed Jan. 9, 1922.

Endorsed on cover: File No. 28,580. New York Supreme Court, Term No. 625. The State Industrial Commission of the State of New York, petitioner, vs. Nordenholt Corporation and The Travelers' Insurance Company. Petition for writ of certiorari and exhibit thereto with notice and proof of service. Filed November 22d, 1921. File No. 28,580.

No. 625

United States Supreme Court

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner.

In the Matter of the Claim for Compensation under the Workmen's Compensation Law of New York made by SEBASTIANA INSANA, mother of GUISEPPE INSANA, for his death,

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELER'S INSURANCE COMPANY, Insurance Carrier.

PETITION AND BRIEF FOR WRIT OF CERTIORARI

CHARLES D. NEWTON,
Attorney-General,
Attorney for State Industrial Commission of New York,
Petitioner.

E. CLARENCE AIKEN,
of Counsel for State Industrial Commission, Petitioner.

SUPREME COURT OF THE UNITED STATES

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner.

In the Matter of the Claim for Compensation under the Workmen's Compensation Law of New York made by SEBASTIANA INSANA, Mother of GUISEPPE INSANA, for his Death,

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

To BENJAMIN C. LODER, *Attorney for Nordenholt Corporation and The Travelers Insurance Company:*

YOU ARE HEREBY NOTIFIED that the petition and brief in support thereof, of which the annexed are copies herewith served upon you, will be submitted to the Supreme Court of the United States at its Court Room in the Capitol, in the city of Washington, on the 5th day of December, 1921, at the opening of court at 12 o'clock noon

of that day, or as soon thereafter as counsel can be heard.

Dated, November 15, 1921.

E. CLARENCE AIKEN,
of Counsel for Petitioner,
Office & P. O. Address,
Capitol, Albany, N. Y.

UNITED STATES SUPREME COURT

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner.

In the Matter of the Claim for Compensation under the Workmen's Compensation Law of New York made by SEBASTIANA INSANA, Mother of GUISEPPE INSANA, for his Death,

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

To the Supreme Court of the United States and to the Honorable Justices Thereof:

The petition of the State Industrial Commission of the State of New York respectfully shows:

First. That your petitioner is a Commission duly appointed and organized under the laws of the State of New York to administer the Workmen's Compensation Law passed by said State, constituting chapter 67 of the Consolidated Laws as amended. That under the Workmen's Compensation Law as aforesaid your petitioner determines all questions within its jurisdiction un-

less reversed or modified on appeal; that appeals may be taken from awards or decisions of your petitioner to the Appellate Division of the Supreme Court, Third Judicial Department, and section 23 of said law provides that the Commission shall be deemed a party to every such appeal, and the Attorney-General, without extra compensation, shall represent the Commission thereon; and further provides that appeal may also be taken to the Court of Appeals from the decision of the Appellate Division.

Second. That on May 15, 1918, one Guiseppe Insana was employed by the defendant Nordenholt Corporation as a longshoreman in New York city, and that on said May 15, 1918, while the said Guiseppe Insana was engaged in the regular course of his employment and while piling bags of hard red cement at the pier of his employer in Brooklyn, New York, and while standing on a pile of said bags about eight feet high and reaching down for another bag, he slipped and fell off the edge of the pile to the ground, striking on the left side of his chest; that the said accidental injuries were sustained at about 4:45 P. M. on said day and about 5:00 P. M. he quit work and proceeded to his home and died at about 6:00 P. M. from the accidental injuries sustained as aforesaid in the course of his employment.

Third. That Sebastiana Insana, his mother, made application to your petitioner for an award of compensation for his death and that on the 16th day of June, 1919, your petitioner made an award of compensation against the Nordenholt Corporation, Employer, and The Travelers In-

surance Company, Insurance Carrier, to the said Sebastiana Insana, dependent mother, aged 49 years, at the rate of $5.77 weekly during dependency, and also the said Sebastiana Insana in the sum of $100 on account of the funeral expenses of said Guiseppe Insana, deceased.

Fourth. That the said employer and insurance carrier appealed from said award to the Appellate Division of the Supreme Court and the said matter was argued before said court, consisting of five judges, which at first affirmed said award but upon reargument reversed the said award and dismissed the claim at a term commencing on the 9th day of November, 1920, on the authority of *Matter of Keator* v. *Rock Plaster Mfg. Co.*, 224 N. Y. 54, and *Matter of Anderson* v. *Johnson Lighterage Co.*, 224 N. Y. 539; that your petitioner thereupon took an appeal to the Court of Appeals from the said order of reversal of the Appellate Division and the matter was argued in said Court of Appeals, and, after due consideration, the said court decided that the order of the Appellate Division should be affirmed on the ground that the remedy of the claimant was in admiralty; that the said Court of Appeals wrote no opinion upon said decision but previously and at same session of the court, in the case of *Newham* v. *Chile Exploration Company*, decided the same question with an opinion by Judge Crane.

Fifth. That your petitioner contended in said proceeding, both before the Appellate Division and the Court of Appeals, that admiralty had no jurisdiction of accidents which occurred upon a

dock, pier or wharf, but that your petitioner had exclusive jurisdiction to hear and decide such case. That the Court of Appeals of the State of New York is the highest court of said State in which could be had a decision on the questions herein raised by the said contentions of your petitioner; and that said Court of Appeals affirmed the order of the Appellate Division of the Supreme Court reversing said award and sent down its remittitur consisting of a copy of said order of the Court of Appeals; that said remittitur was filed on the 15th day of November, 1921, in the office of the said Appellate Division of the Supreme Court, where said remittitur now remains of record. Upon said remittitur a final order, of which your petitioner seeks re-examination and reversal by this court, was entered on the 15th day of November, 1921, in the office of the clerk of said Appellate Division, whereby the said order of the Court of Appeals herein became the order of the said Appellate Division, and the sum of $119.00, costs of said appeal to the Court of Appeals, was awarded against your petitioner. The decision was in favor of a right, privilege and immunity set up by the defendants, to wit, to have their liability, if any, determined under the Constitution and statutes of the United States with reference to the jurisdiction of admiralty.

Sixth. Questions of great public interest are involved in this case, for the following reasons:

(a) There are several cases pending before your petitioner in which the same question is involved, namely, the right of a person, injured upon a dock or wharf, or his or her dependents,

to recover compensation for said injury. The decision in question affects a large number of harbor workers and longshoremen and stevedores who reside in New York city, estimated to be from forty to fifty thousand men.

(b) Your petitioner suggests that the Appellate Division of the Supreme Court and the Court of Appeals have misapprehended the decision of this court in the case of *Southern Pacific Company* v. *Jensen* and the case of *Knickerbocker Ice Company* v. *Stewart*, and that this court did not intend by those decisions to hold that the remedy of a longshoreman, working upon a pier, dock or wharf and who was injured thereon, was in admiralty, and your petitioner contends that it is and always has been the rule that injuries occurring upon the land were not cognizable by courts of admiralty.

WHEREFORE, your petitioner prays that a writ of certiorari may be allowed and issued, directed to the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, commanding said Appellate Division to send to the Supreme Court of the United States a record of all and singular the record and papers in said special proceeding and for a citation and supersedeas to stay execution, to the end that the errors of which your petitioner complains herein and in the assignment of errors herein filed may be reviewed, and, if errors be found, corrected in conformity to the Constitution and Laws of the United States.

And your petitioner will ever pray.

Dated: November 1, 1921.

THE STATE INDUSTRIAL COMMISSION.

By

HENRY D. SAYER,
State Industrial Commissioner.

JOHN D. HIGGINS,
Chairman, State Industrial Board.

I hereby certify that I have examined the foregoing petition and that in my opinion the petition is well founded and the case is one in which the prayer of the petitioner should be granted by this court.

E. CLARENCE AIKEN,
Deputy Attorney-General,
of Counsel for Commissioner.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

HENRY D. SAYER, being duly sworn, deposes and says that he is State Industrial Commissioner of the State of New York; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

HENRY D. SAYER.

Subscribed and sworn to before me
this 16th day of November, 1921.

George J. Stricker
Notary Public, Bronx Co
Certificate filed in New York

UNITED STATES SUPREME COURT

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner.

In the Matter of the Claim for Compensation under the Workmen's Compensation Law of New York made by SEBASTIANA INSANA, Mother of GUISEPPE INSANA, for his Death,

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

BRIEF FOR THE STATE INDUSTRIAL COMMISSION.

This is an application by the State Industrial Commission of the State of New York to review by writ of certiorari a decision of the Court of Appeals in the above entitled matter, which affirmed the order of the Appellate Division of the Supreme Court reversing an award for compensation under the Workmen's Compensation Law of the State of New York and dismissing the claim. The dismissal was made on the ground that the remedy of the claimant, if any, was in

admiralty under the decision of this court in the cases of *Southern Pacific Co.* v. *Jensen, Clyde Steamship Co.* v. *Walker*, 244 U. S. 205, 255, and *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 156.

The defendant was a corporation whose principal place of business was New York city and was engaged in the business of stevedoring. While the deceased employee was piling bags of hard red cement on a pile on the dock or pier, he slipped off the edge of the pile and fell to the ground, receiving injuries which resulted in his death soon thereafter. The mother of the deceased workman made an application for compensation as a dependent, which was granted. The defendant employer and the insurance carrier appealed to the Appellate Division of the Supreme Court, which reversed the award and dismissed the claim and this was affirmed by the Court of Appeals.

POINT I

AN INJURY ON THE DOCK, PIER OR WHARF IS NOT A MARITIME INJURY AND, THEREFORE, IT DOES NOT COME UNDER THE ADMIRALTY LAW. AND, IF THERE IS NO JURISDICTION UNDER THE ADMIRALTY LAW, THERE IS NO FOUNDATION FOR DENYING JURISDICTION UNDER THE WORKMEN'S COMPENSATION LAW OF THE STATE OF NEW YORK.

It was held by this court in the case of *The Plymouth*, 3 Wall. 20, 36, that "the whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the jurisdiction depends — on the high seas or navigable waters."

The Circuit Court of Appeals of the Ninth Circuit has applied this rule in the case of

Swayne & Hoyt, Inc., v. *Barsch*, 226 Fed. Rep. 581, Gilbert, C. J., saying:

"The defendant contends that the Employers' Liability Act of Oregon is not applicable for the further reason that the stevedore's employment is a maritime contract, and is controlled by the maritime law, that maritime law is to be applied in determining all the obligations arising from the contract, and that a state legislature cannot enlarge such obligations or change the maritime law. The action in the case at bar was not brought in admiralty. The paper which the plaintiff filed was not a libel in personam, but a complaint in an action at law, and as an action at law the case was tried before a jury. The decision in *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 34 Sup. Ct. 733, 58 L. ed. 1208, 51 L. R. A. (N. S.) 1157, cited by the defendant, is not authority for the proposition that there would have been jurisdiction in admiralty. What was decided in that case was that admiralty had jurisdiction of a suit in personam to recover for injuries sustained by an employe who is engaged in loading a vessel at a dock in navigable waters, the employee having been injured while at work on the vessel. The court reaffirmed the general principle 'that the test of admiralty jurisdiction in tort in this country is locality.' The opinion cites and leaves undisturbed a long line of decisions made both before and since the decision in *The Plymouth*, 3 Wall. 20, 18 L. ed. 125, that where the tort is committed, not on the vessel, but on the shore, or on the dock, or where it is committed partly on land and partly on water, the question whether admiralty has jurisdiction over it is determined by the place of the damage, and not by the place of the origin of the tort."

To the same effect, the Supreme Court of Oregon, *Rorvick* v. *Northern Pacific Lumber Co.*, 195 Pac. Rep. 163, saying:

> "The test for determining whether the tort is a land or maritime tort is not the same as the test for determining whether a contract is a land or a maritime contract. The character of a tort is determined by the locality of the tort; and consequently the fact that a person is injured while performing a maritime contract does not necessarily determine the character of a tort. * * *
>
> "From this conclusion it follows as a natural sequence that there was nothing in the character and nature of the tort to prevent the Workmen's Compensation Act of California from operating."

The Court of Appeals of the State of New York, however, in the cases of *Anderson* v. *Johnson Lighterage Co.* and *Keator* v. *Rock Plaster Mfg. Co.*, 224 N. Y. 539, 544, held by a vote of 4 to 3 that the Industrial Commission had no jurisdiction to make an award where longshoremen were injured on the pier, for the reason that the employee was engaged in performing a maritime contract, the decision in the two cases named being based upon the decision made at the same time in *Doey* v. *Howland Co.*, 224 N. Y. 39, in which the deceased employee concededly met his death upon a steamship and therefore was subject to admiralty jurisdiction.

In the *Keator* case, subsequent to the decision of that court, an action was commenced in admiralty in the United States District Court for the Southern District of New York, Judge Mayer

(256 Fed. Rep. 574), dismissed the case because, as he clearly pointed out, the injury occurred on a dock and was not a maritime injury over which admiralty had jurisdiction. Judge Mayer said:

> "The jurisdiction of admiralty in tort cases is exclusively dependent upon the locality of the act. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52. In a number of cases the question has arisen as to whether or not the tort should be regarded as having happened on the vessel or on the land where the tort was caused by an act which was started on the vessel or on the dock, as the case may be, and ended with death or injury on the land or vessel, as the case may be. In these cases it has been uniformly held that the locus of the tort is the place where the injury was actually inflicted. The *Mary Garrett*, D. C., 63 Fed. 1009, and cases cited. *Hermann* v. *Post Blakely Mill Co.*, D. C. 69 Fed. 646 and cases cited. *The Bee*, D. C. 216 Fed. 709 and cases cited. *As Keator was killed on the dock it is apparent that the tort was not maritime and, therefore, there is no jurisdiction in admiralty, and the exceptions must be sustained on the ground that there is lack of jurisdiction.*"

The result, therefore, of the litigation in the *Keator* case was that the Court of Appeals held that the State Industrial Commission had no jurisdiction because it was a case of admiralty jurisdiction, and the admiralty court decided that it had no jurisdiction for the reason that the injuries were not maritime but occurred upon the land.

Inasmuch as this question affects several thousand longshoremen who work in New York city, it was thought proper to bring the question to this Court for decision. The contention here made is that this State and its courts have jurisdiction unless that jurisdiction is ousted by the jurisdiction of the Federal admiralty courts. If the Federal courts have no jurisdiction by reason of the rule as to locality, we cannot see how the jurisdiction of the Federal courts would oust the State Industrial Commission of jurisdiction.

Since the decision in the *Keator* and *Anderson* cases, the case of *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 156, 158, has been decided. We have in the opinions delivered in that case, the majority opinion of Mr. Justice McReynolds and the minority opinion of Mr. Justice Holmes, statements further confirmatory of the position taken, that injuries received by an employee working under a maritime contract and received upon a dock might be compensable under the New York law. Mr. Justice McReynolds says, referring to the case of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205.

> "And we held that, when applied to *maritime injuries*, the New York Workmen's Compensation Law conflicts with the rules adopted by the Constitution and to that extent is invalid.
>
> * * * * * * * * * *
>
> "We have held that before the amendment and irrespective of that section, such rights and remedies did not apply to *maritime torts* because they were inconsistent with paramount Federal law — within that field they had no existence."

Further in the *Stewart* case we find the following statement of Mr. Justice Holmes:

> "In *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, the question was whether there was anything in the Constitution or laws of the United States to prevent a State from imposing upon an employer a limited but absolute liability for the death of an employee upon a gang-plank between a vessel and a wharf, *which the State unquestionably could have imposed had the death occurred on the wharf.*"

Mr. Justice Holmes here seems to speak for the whole court when he states that the State unquestionably could have imposed the liability had the death occurred on the wharf, and his opinion is concurred in by the statement in Mr. Justice McReynold's opinion with reference to maritime injuries.

It will be borne in mind that in the *Stewart* case William M. Stewart suffered injuries of a maritime nature in that he fell into the Hudson river and was drowned, maritime injuries being such injuries as occur upon or in navigable waters. Mr. Justice McReynolds in the *Jensen* case also refers to maritime injuries, Jensen having been injured on the gang-plank of the vessel. He says:

> "His employment was a maritime contract; THE INJURIES WHICH HE RECEIVED WERE LIKEWISE MARITIME; and the rights and liabilities of the parties in connection therewith were matters within the admiralty jurisdiction. * * * *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, * * *

> The Legislature exceeded its authority in attempting to extend the Statute under consideration *to conditions like those here disclosed*. So applied, it conflicts with the Constitution and to that extent is invalid."

If there is no jurisdiction in admiralty for an injury to a stevedore or any other employee upon the dock, then it would seem that the rule of law enunciated by this court in *Southern Pacific Co.* v. *Jensen*, would have no application as the only ground for the rule there enunciated was that there was no jurisdiction for the injury there sustained, which was on board the vessel.

The Court of Appeals seems to have based its decision upon the fact that remedy for compensation was a matter of contract. We do not see how that affects the question, provided admiralty had no jurisdiction of the subject-matter, the subject-matter being the injury received by the employee while standing on the land. We think also that the Court of Appeals is in error in basing the foundation of the Workmen's Compensation Law upon contract. While it may be true that the Compensation Law reads its requirements into every contract of employment, still the foundation of the New York Compensation Law is not contract but a statutory liability which takes the place of the common law liability for negligence. The highest authority upon this subject is the opinion of this court in the cases of *N. Y. Central R. R. Co.* v. *White*, 243 U. S. 188, and *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, in which this court upholds the Workmen's Compensation Law upon the ground that it takes the place of the former liability for neg-

ligence and that the liability is a statutory liability.

Even if the employment of a longshoreman or repairman is a maritime contract, there is no Federal law governing the relation of master and servant in respect to accidents happening on land so that either the State law of torts or the Compensation Law of the State is the only remedy for accidents of this kind. Where the accidents happen on land there is no admiralty tort, and, therefore, no uniform law which can be applied. As the law of the State upon the subject is only limited by jurisdiction of the Federal courts, if the Federal courts have no jurisdiction upon the land there is no reason why the State jurisdiction should not be effective. The power of the State to determine what damage shall be recovered for a work accident, at least when it is a tort, is part of the general police power of the State and is not limited in any way by the admiralty clause of the Constitution since there is no admiralty jurisdiction over accidents on land. Congress under the admiralty power cannot deprive the states of rights to legislate in respect to torts on land and Congress has not attempted to exercise that power.

THE MOTION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

CHARLES D. NEWTON,
Attorney-General.

E. CLARENCE AIKEN,
Deputy Attorney-General,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1921

No. 625

THE STATE INDUSTRIAL COMMISSION,
Petitioner.

In the Matter of the Claim of SEBASTIANO INSANA for Compensation under the Workmen's Compensation Law,

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

MOTION TO ADVANCE

CHARLES D. NEWTON,
Attorney-General of the State of New York.

E. CLARENCE AIKEN,
Deputy Attorney-General,
of Counsel for the State Industrial Commission,
Capitol, Albany. N. Y.

BENJAMIN C. LODER,
Attorney for Defendants-in-Error.

Supreme Court of the United States

October Term, 1921. 1

No. 625.

THE STATE INDUSTRIAL COMMISSION, *Petitioner.*

In the Matter of the Claim of SEBASTIANA INSANA for compensation under the Workmen's Compensation Law, 2

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

3

SIRS:

PLEASE TAKE NOTICE that a motion will be made at a session of this court appointed to be held on the 3rd day of January, 1922, at 12 o'clock noon, or as soon thereafter as counsel can be heard, to advance the hearing and argument in the above cause, and for such other relief as may be proper. 4

Dated: Albany, N. Y., 1921.

CHARLES D. NEWTON,
Attorney-General,
Attorney for The State Industrial Commission,
Office & P. O. Address,
Capitol, Albany, N. Y.

E. CLARENCE AIKEN, 5
Deputy Attorney-General,
Of counsel.

To:

Benjamin C. Loder, Esq.,
Attorney for Defendants-in-Error,
30-42 E. 42nd Street, New York City.

SUPREME COURT OF THE UNITED STATES

October Term, 1921.

No. 625

THE STATE INDUSTRIAL COMMISSION, *Petitioner.*
In the Matter of the Claim of SEBASTIANA INSANA for compensation under the Workmen's Compensation Law,
against
NORDENHOLT CORPORATION, Employer, and THE TRAVELER'S INSURANCE COMPANY, Insurance Carrier.

Now comes The State Industrial Commission, the Petitioner, and moves this court to advance this cause on the docket of the court.

STATEMENT AND REASONS FOR ADVANCEMENT

The State Industrial Commission of New York is charged under the statutes of the State of New York with the administration of the Workmen's Compensation Law in said State and by the said law is made a party to all proceedings upon appeal in matters decided by it.

On the 16th day of June, 1919, Plaintiff-in-Error made an award of compensation against the Nordenholt Corporation and The Travelers

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Insurance Company to Sebastiana Insana, defendant mother, aged 49 years, at the rate of $5.77 weekly, during dependency, and also to the said Sebastiana Insana in the sum of $100.00 on account of the funeral expenses of Guiseppe Insana, deceased. Said award was reversed by the Appellate Division of the Supreme Court on the 9th day of November, 1920, which decision was affirmed by the Court of Appeals. That Guiseppe Insana, the deceased workman, was employed by the defendant, the Nordenholt Corporation, as a longshoreman and was injured while engaged in the regular course of his employment at a pier of his employer in Brooklyn, N. Y., and died soon thereafter from the accidental injuries so sustained; that the said Appellate Division of the Supreme Court and the Court of Appeals held said award to be invalid and dismissed the claim on the ground that the claimant came within admiralty jurisdiction, which decision is challenged by the Plaintiff-in-Error.

That the case is of public and general interest for the reason that there are a large number of harbor workers and longshoremen in New York City, estimated at from forty to fifty thousand men who are interested in the holding of this court upon said question. That there are several cases pending before your petitioner in which the same question is involved, and also several cases pending in the courts; and that most of the claimants for compensation are men or women dependent upon their wages and with very limited means

and it is, therefore, very desirable to have an early decision.

CHARLES D. NEWTON,
AttorneyGeneral,
Attorney for the State Industrial Commission.

E. CLARENCE AIKEN,
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Now come Nordenholt Corporation and The Travelers Insurance Company, defendants-in-error, represented by E. Clyde Sherwood and Benjamin C. Loder, and on motion to advance this cause concur with the counsel for the State Industrial Commission.

E. CLYDE SHERWOOD,
Counsel for Defendants-in-Error.

BENJAMIN C. LODER,
Attorney for Defendants-in-Error.

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Supreme Court of the United States

No. 625.

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner,

IN THE MATTER

of

The Claim for Compensation under the Workmen's Compensation Law of New York made by SEBASTIANA INSANA, mother of GIUSEPPE INSANA, for his death,

against

NORDENHOLT CORPORATION, Employer, and THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

BRIEF FOR NORDENHOLT CORPORATION AND THE TRAVELERS INSURANCE COMPANY.

BENJAMIN C. LODER,
Attorney for Employer and Insurance Carrier.

E. C. SHERWOOD,
WILLIAM B. DAVIS,
Of Counsel for Employer and Insurance Carrier.

PRESS OF FREMONT PAYNE, Inc., 80 Washington St., New York City

Supreme Court of the United States

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner,

In the Matter

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against

NORDENHOLT CORPORATION, Employer; THE TRAVELERS INSURANCE COMPANY, Insurance Carrier.

BRIEF FOR NORDENHOLT CORPORATION AND THE TRAVELERS INSURANCE COMPANY.

This is a proceeding brought by the mother of one Giuseppe Insana against Nordenholt Corporation, her son's employer, on the theory that his death was due to accidental injuries arising out of and in the course of his employment, and seeking compensation under the provisions of the New York Workmen's Compensation Law. The Travelers In

surance Company is also a party to the proceeding because it is the insurance carrier for the employer and is subject to the same liability as the employer for the payment of the compensation.

The Nordenholt Corporation is engaged in the stevedoring business and was so engaged on May 15, 1918, when Insana is said to have sustained the injuries which later resulted in his death. Insana was a longshoreman in the employ of the Nordenholt Corporation unloading a steamship lying alongside a pier in Brooklyn. The cargo consisted of bags of cement. After these were hoisted from the vessel to the dock they were there tiered up in regular order. The work of tiering up the bags was the particular part of the work which Insana and several other longshoremen who worked with him were assigned to do. The accidental injury alleged and found as the cause of his death occurred when he slipped from the pile of bags on which he stood, and fell to the ground.

The New York State Industrial Commission granted an award to the claimant Sebastiana Insana. The Appellate Division of the Supreme Court, upon appeal to that court, reversed the award and dismissed the claim (195 App. Div., 913), and thereafter the Court of Appeals affirmed the determination of the Appellate Division (232 N. Y. Advance Sheet, No. 1092, dated December 3, 1921, page 13).

The Question Presented Upon This Review.

The question here involved is not whether the admiralty jurisdiction of the courts of the United States extends to an action to recover damages for

a tort committed on land. This is not a suit in admiralty, nor is it a common-law action to enforce a right given by the maritime law. It is not based on the theory of tort. It is not even a proceeding to recover *damages* upon any theory.

The precise question presented is whether the Workmen's Compensation Law of the State of New York is effective to place upon the Nordenholt Corporation, without its consent, the legal obligation to pay the sums of money computed as therein provided, by reason of the accidental death of its employee, regardless of any question of fault or dereliction of duty on the part of the employer.

POINT I.

The New York Workmen's Compensation Law is not applicable to a maritime contract of employment for the reason that when so applied it works material injury to characteristic features of the relationship created by such contract and seriously impairs Federal control over maritime affairs.

While admiralty jurisdiction in tort depends on the locality of the tort, in matters of contract it depends on the subject-matter, the nature and character of the contract.

> *North Pac. Steamship Co.* vs. *Hall Bros., etc., Co.*, 249 U. S., 119;
> *Union Fish Co.* vs. *Erickson*, 248 U. S., 308.

The work of loading and unloading a vessel is maritime work and a contract of employment for the purpose of such work is a maritime contract.

Atlantic Transport Co. vs. *Imbrovek*, 234 U. S., 52, 62;
Southern Pacific Co. vs. *Jensen*, 244 U. S., 205;
Knickerbocker Ice Co. vs. *Stewart*, 253 U. S., 149;
Peters vs. *Veasey*, 251 U. S., 121.

So that the contract of employment involved in the present case is plainly of a maritime character and in this important respect, the case differs from *Grant, Smith-Porter Ship Company* vs. *Rhode* (No. 35, decided January 3, 1922), in which this court held the Oregon compensation statute applicable.

The present case involves the compensation statute of the State of New York. This court is familiar with the provisions of that statute. It is the same statute as that involved in both the *Jensen* and *Stewart* cases, *supra;* and of it this court wrote in the latter case (page 166):

> "But here the state enactment prescribes exclusive rights and liabilities; undertakes to secure their observance by heavy penalties and onerous conditions, and provides novel remedies incapable of enforcement by an admiralty court (citing cases). The doctrine of *The Hamilton* may not be extended to such a situation."

Of the same statute this court said in the *Jensen* case (at page 218):

> "The remedy which the compensation statute attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court, and is not saved to suitors from the grant of exclusive jurisdiction."

It is a compulsory statute as opposed to an elective one; that is to say, neither the employer nor the employee is given the right to choose whether or not to be bound by its provisions.

The question whether an *elective* compensation statute would be effective in the circumstances upon which this proceeding is based, if the employer and the employee had elected to accept its provisions, is not here presented. As we read the recent decision of this court in *Grant, Smith-Porter Ship Company* vs. *Rhode* (No. 35, decided January 3rd, 1922), the voluntary acceptance of the state statute by the parties was one of the considerations upon which the decision of the court was based. The same is also true of the recent decision of the Supreme Court of Maine in the case of *Berry* vs. *Donovan & Sons, Inc.*, 115 Atl. Rep., 250. Each of those cases involved a statute which the parties had the right either to accept or reject, and the proof showed that they had accepted it. But see *Duart* vs. *Simmons*, 231 Mass., 313.

The nature of the New York compensation statute is essentially different. The liability therein attempted to be imposed depends not at all upon the will of the parties to the contract of employment, nor does it rest upon the theory that there has been fault on the part of the employer. It is not grounded upon the law of torts, or any modification of that law, or any theory consistent there with.

The sole basis of the liability created by this statute is *the very relationship of employer and employee*, to which need be added only the occurrence of an accidental injury arising out of and in the course of the work contemplated by the contract of employment. *Thus, the liability sought to be imposed by this statute is grounded upon the contract of employment itself.*

In construing this statute, the New York Court of Appeals holds that the obligation created by it is *contractual* and for this reason follows the parties to the contract when they go into a foreign jurisdiction whose laws regulate the whole question of the employee's right to recover damages for personal injuries; provided only that the contract of employment was entered into within the State of New York.

Post vs. *Burger & Gohlke*, 216 N. Y., 544.

It is even held by that court that the provisions of the statute apply to a contract of employment entered into within the state, though the work contemplated by the contract is to be performed wholly outside the State of New York.

Klein vs. *Stoller & Cook Co.*, 220 N. Y., 670;

Fitzpatrick vs. *Blackall & Baldwin Co.*, 220 N. Y., 671.

In the *Post* case, *supra*, the whole court concurred in the opinion written by Judge Chase, from which we quote as follows:

> "If it was the intention of the Legislature to require that in every contract of employ-

ment in the cases provided by the act, there should be included and read into the contract the provisions of the act that such provisions should be applicable in every case of injury wherever the employee is engaged in the employment, then the parties are bound thereby without reference to the place where the injury occurs. * * * It is well settled that the Legislature has the power, in a case like that now under consideration, to compel a contract between employer and employee that is extraterritorial in effect. * * * The act, in view of its humane purpose, should be construed to intend that in every case of employment there is a constructive contract between the employer and employee, general in its terms and unlimited as to territory, that the employer shall pay as provided by the act for a disability or the death of the employee as therein stated. The duty under the statute defines the terms of the contract. * * * The purpose of the Legislature would seem to require that the act be read into every contract of employment and provide compensation for every injury incurred while engaged in such employment without limitation. * * * If the relation between the employer and employee is contractual the contract should be construed as binding upon both parties thereto without limitation as to territory, the same as all ordinary contracts, based upon mutual agreement independent of statutory duty. * * * We appreciate that any determination that may be made of the question under consideration will result in some practical difficulties

in administering the statute, but the difficulties that will be met with in administering the statute construed as requiring a contract binding upon both parties without limitation will be less burdensome than the difficulties that would be experienced with a contrary construction of the statute."

The following cases outside of New York involving the extraterritorial effect of workmen's compensation statutes hold that the parties' rights are matter of contract or quasicontract, rather than tort.

American Radiator Co. vs. *Rogge*, 86 N. J. Law, 436; aff'd 87 N. J. Law, 314;
Kennerson vs. *Thames Towboat Co.*, 89 Conn., 367;
Gooding vs. *Ott*, 77 W. Va., 487;
Hagenback vs. *Leppert* (Ind), 117 N. E. Rep., 531;
Grinnell vs. *Wilkinson*, 39 R. I., 447;
State ex rel. Chambers vs. *District Court, Hennepin Co.* (Minn.), 166 N. W., 185.

In Massachusetts and California it has been held that their compensation statutes have no application to accidents occurring outside the state.

Kruse vs. *Pillsbury* (Cal.), 162 Pac. Rep., 891;
Gould's Case, 215 Mass., 480, 482.

The latter decision is based on an analysis of the statute, from which the court determined that

the Legislature did not intend that the statute should apply to accidents happening outside the state. In discussing a question of practice the court said that in one aspect a case under the act resembles an action at law, since it seeks ultimately the payment of money. "In another aspect it is akin to the enforcement of the specific performance of a contract, designed to cover the whole range of misfortunes likely to arise in the course of employment in a state with many and diversified industries." The compensation, the court said, was to be paid not directly by the employer, but by the insurer. "The employee has no immediate relation with the insurer. He is the beneficiary under a contract between the employer and the insurer. A beneficiary under any instrument to which he is not a direct party more naturally looks to equity rather than to law for relief. * * * In the main, causes under the act in court should be treated as equitable rather than legal in nature, procedure and final disposition."

Upon the theory of the contractual nature of the obligation employers have been compelled to pay and have paid large sums of money on account of accidents occurring outside the State of New York; and we suppose that in dealing with a question involving the nature of the obligation imposed by this statute, this court will accept that construction of its provisions which has been deliberately adopted by the highest court of the State of New York.

> "It is settled doctrine that Federal courts must accept the construction of a state statute deliberately adopted by its highest court.

Old Colony Trust Co. vs. *Omaha*, 230 U. S., 100; *Fairfield* vs. *Gallatin County*, 100 U. S., 47." *Northern Pacific Railway Co.* vs. *Meese*, 239 U. S., 614, 619.

In *Illinois Central R. R. Co.* vs. *People of the State of Illinois*, 163 U. S., 142, 152, this court in considering the constitutionality of a state statute said:

> "The construction given to the statute in this particular by the state court does not involve any Federal question, and must be accepted by this court in judging of the constitutionality of the statute. *Chicago, M. & St. P. R. Co.* vs. *Minnesota*, 134 U. S., 418, 456."

This court ordinarily will treat the construction which the highest court of a state has given to a statute of the state as part of the statute.

> *Douglass* vs. *Pike County*, 101 U. S., 677;
> *Bucker* vs. *Cheshire R. Co.*, 125 U. S., 555;
> *Forsyth* vs. *Hammond*, 166 U. S., 506.

Starting, then, with the proposition that by this statute the Legislature of the State of New York has modified or attempted to modify every contract of employment made within the borders of that state by creating an implied stipulation therein that in certain contingencies (including accident and injury to the employee) the employer will make payment of money according to the schedule set forth in the statute, the question arises whether such legislation is valid as to maritime contracts

of employment. Does this attempted interference with or modification of a maritime contract lie within the power of the State of New York?

In view of the nature of the obligation imposed by the New York statute, as it has been construed by the highest court of the state, it becomes apparent that the question here involved is closely akin to that presented in *Union Fish Co.* vs. *Erickson*, 248 U. S., 308. That was an admiralty cause in which a master sought to recover damages for breach of an oral contract with the owner of a vessel for services to be performed principally, though not exclusively, upon the sea. The owner claimed that since the contract was made in California, it was invalid because it did not satisfy the requirements of a California statute that such a contract be in writing. This court held that the action could not be defeated because of the provisions of the state statute; that the maritime law controlled and (page 313) "was not subject to limitation because the particular engagement happened to be made in California. The parties must be presumed to have had in contemplation the system of maritime law under which it was made."

Counsel for the State Industrial Commission contends, in effect, that the New York Compensation Law ought to be applied in this case because in the present state of the law a cause of action cognizable in admiralty did not arise upon and on account of the death of Insana. A somewhat similar idea prevailed in the New York Court of Appeals in the case of *Winfield* vs. *N. Y. C. & H. R. R. R. Co.*, 216 N. Y. 284, in which it was held by that court that this same statute was applicable to cases arising out of work done in connection with

interstate commerce, since Congress had not enacted a Federal compensation statute; but upon review in this court the error was pointed out and corrected (244 U. S., 147). Therefore, the fact that no Federal law gives the decedent's representatives or dependants any rights or remedy against the employer on account of the death of the employee in the absence of any proof or claim of fault on the employer's part, constitutes no reason why the state compensation statute should be applied. The absence of such a Federal law is not the controlling consideration. It is more pertinent to inquire: Has Congress the *power* to enact a compensation statute applicable to all cases of accidental injury and death arising out of and in the course of maritime employment (e. g., stevedoring operations), which occur on the dock as well as to those occurring on the vessel. If Congress has no such power then, certainly, our Federal government has a very imperfect control over maritime operations, a control which is essentially different from and decidedly inferior to its power of control over operations involving interstate commerce. As matter of fact, maritime operations usually involve either interstate or foreign commerce.

The Federal government's jurisdiction over matters of a maritime nature is not limited to mere adjudication of admiralty causes by the courts of the United States, as a narrow interpretation of the constitutional grant of power might indicate. Jurisdiction over such matters resides in the legislative and executive branches of the Federal government as well as in the judicial branch. An illustration is the limited liability statute of Congress, by virtue of which this court has held

that an action for damages in a state court on account of a non-maritime tort should be enjoined by a court of admiralty in a proceeding brought by the owners for the limitation of their liability although in this way jurisdiction was drawn to the admiralty court over a controversy which, but for the statute, the court would have had no jurisdiction to entertain.

Richardson vs. *Harmon*, 222 U. S., 96.

The fundamental and primary purpose of the constitutional grant to the Federal government of jurisdiction over maritime affairs and over matters relating to the rights of those engaged in shipping was to insure uniformity in the law—not merely uniformity in the law of torts, but uniformity of a more general and fundamental nature. Thus in the *Stewart* decision we find a reference to "harmony and appropriate uniform rules relating to maritime matters" (253 U. S., at page 160).

In *The Lottawanna*, 21 Wall., 558, 574, we find these words:

> "* * * the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states."

This expression was quoted with approval by this court in the case of *Chelentis* vs. *Luckenbach*, 247 U. S., 372.

In the *Jensen* case this court (at page 216), uses the expression:

> "* * * characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations."

And at page 217 of the same case the court referred to "uniformity in respect to maritime matters."

It will thus be seen that the field within which the Federal government was given jurisdiction—largely for the purpose of promoting uniformity—is very broad and extends beyond the mere adjudication of cases involving torts committed on navigable waters and actions on maritime contracts. It covers "maritime matters," "all subjects of a commercial character affecting the intercourse of the states" and the international and interstate relations arising out of maritime operations.

It is argued by counsel for the State Industrial Commission, and with some force, that the prior decisions of this court involving this New York compensation statute, are distinguishable from the present case in that the injury arose, in each instance, upon or in navigable waters. Yet we think that those decisions and the reasoning upon which they are grounded go far toward solving the problem involved in the present case.

In the *Jensen* case, *supra*, this court, while not attempting to formulate a concrete rule capable of ready application in every case, yet stated the broad conclusion of the court in this language (at page 216):

> "And plainly, we think, no such legislation is valid if it contravenes the essential purpose

expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself."

In seeking to apply that decision to the present case, the problem here presented may be stated to be whether the statute works material prejudice to characteristic features incident to the relationship of employer and employee created by the maritime contract of employment. In dealing with that question, we suppose that it is pertinent to consider the practical results of attempting to apply the provisions of the statute to a case like the present one. When we do this we are met at the outset with the consideration that it is now established by the decisions of this court already referred to, that the provisions of the statute are inapplicable to any case of this character where the accident occurs on or in the water, or upon a vessel afloat in the water. In these circumstances, when we contemplate the practical results of applying the statute to all accidents occurring inshore of the water line, it is not too much to say that the end is confusion and conflict, indefensible upon any theory of common sense or practical utility. We agree with everything the learned counsel for the State Industrial Commission says in regard to the dangers and intricacies of stevedoring work Yet we think that those considerations do not ad

vance his argument. If his contention should prevail, the operation of loading or unloading a ship moored alongside a dock, work which in its very nature is continuous and indivisible, would be divided physically in half. One system of law would be applied to one part of the operation, while another system, entirely and fundamentally different, would be applied to the other part. Uniformity of the law, which is frequently spoken of in connection with these cases, does not lie in that direction.

This court in the *Stewart* case, *supra*, said of the constitutional grant to courts of the United States of cases of admiralty and maritime jurisdiction (at page 164):

> "The definite object of the grant was to commit direct control to the Federal government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation, and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union. * * * Obviously, if every state may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which framers of the Constitution both foresaw and undertook to prevent."

Also the following words of this court in the *Jensen* case apply with equal force in the present case (at page 217):

> "If New York can subject foreign ships coming into her ports to such obligations as those imposed by her compensation statute, other states may do likewise. The necessary

consequence would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish, and freedom of navigation between the states and with foreign countries would be seriously hampered and impeded. A far more serious injury would result to commerce than could have been inflicted by the Washington statute authorizing a materialman's lien, condemned in The Roanoke. * * * And finally, this remedy is not consistent with the policy of Congress to encourage investments in ships, manifested in the Acts of 1851 and 1884 which declare a limitation upon the liability of their owners."

POINT II.

The petitioner's contention under the second point that the only remedy for death from maritime accidents in the State of New York is the remedy of workmen's compensation, is based upon the assumption that the provisions of the state compensation statute are applicable to a case like the present one. That is the very question here in controversy.

As applied to a case such as the present one the New York compensation law is either effective or invalid. If it is effective, it gives rise to a claim for compensation and the provision of the statute that such liability on the part of the employer shall be exclusive is likewise valid and effective, and no action would be maintainable against the

employer for damages on the theory of tort or otherwise. On the other hand, if by reason of lack of power in the state legislature the statute is ineffective to impose upon the employer the legal liability therein attempted to be imposed, then obviously the provision that "the liability of an employer prescribed by the last preceding section shall be exclusive," etc., is likewise ineffective to deprive the employee or his representatives, or dependents, of any right which they have independently of this statute.

So that it does not follow that if the New York Workmen's Compensation Law is not applicable, there is no remedy in a case where the accident can be traced to the fault of the employer. We do not maintain that there is a "no man's land" lying between the respective domains of Federal and state jurisdiction. If the maritime law of torts as now understood and applied by courts of admiralty does not extend to the subject matter, the state law of torts may be applicable to it, even though for the reasons which we have attempted to point out, the particular state statute here in question is invalid because it undertakes to do what the individual state has no right to do, viz., arbitarily engraft a stipulation upon a maritime contract, without the consent of the parties to it, to the serious prejudice of such contract and of the Federal government's constitutional power of control over maritime matters.

The judgment of the New York Court of Appeals should be affirmed.

E. C. SHERWOOD,
WILLIAM B. DAVIS,
of counsel.

United States Supreme Court

No. 625

THE STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK,

Petitioner.

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against

NORDENHOLT CORPORATION, Employer, and THE TRAVELER'S INSURANCE COMPANY, Insurance Carrier.

BRIEF FOR STATE INDUSTRIAL COMMISSION

CHARLES D. NEWTON,
Attorney-General,
Attorney for State Industrial Commission of New York,
Petitioner.

E. CLARENCE AIKEN,
of Counsel for State Industrial Commission, Petitioner.

255, and *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 156.

The defendant was a corporation whose principal place of business was New York city and it was engaged in the business of stevedoring. While the deceased employee was piling bags of hard red cement on a pile on the dock or pier, he slipped off the edge of the pile and fell to the ground, receiving injuries which resulted in his death soon thereafter. The mother of the deceased workman made an application for compensation as a dependent, which was granted. The defendant employer and the insurance carrier appealed to the Appellate Division of the Supreme Court, which reversed the award and dismissed the claim and this was affirmed by the Court of Appeals.

POINT I

An Injury on the Dock, Pier or Wharf is not a Maritime Injury and, Therefore, it Does not Come Under the Admiralty Law, and, if there is no Jurisdiction Under the Admiralty Law there is no Foundation for Denying Jurisdiction Under the Workmen's Compensation Law of the State of New York.

The argument for State jurisdiction is this: The State has jurisdiction unless it is excluded by Federal jurisdiction. There can be no Federal jurisdiction for injuries to persons occurring on the dock, i. e., land. The final question, therefore, is this: Has the District Court of the United States jurisdiction of a libel for injuries to the person occurring on the land? We think the whole trend of the decision in this court is to the contrary, and we know no authority of this court which holds that such jurisdiction does exist.

In the case of *The Blackheath*, 195 U. S. 361, 365, Mr. Justice Holmes says:

> "What the early law seems most to have looked to in fixing the liability of the ship was the motion of the vessel which was treated as giving it the character of a responsible cause."

He then discusses the case of *The Plymouth*, 3 Wall. 20, 36, where it was held that "the whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the jurisdiction depends — on the high seas or navigable waters." There can be, of course, no tort to a person upon the land arising from the agency of a ship.

The distinction between injuries upon land and upon the sea is also illustrated by the case of *Cleveland Terminal & Valley R. R. Co.* v. *Cleveland Steamship Co.*, 208 U. S. 316, that being an unsuccessful attempt to libel a vessel in order to enforce the collection of damages to a railroad bridge, dock and other shore structures. The reason for the decision that it was not admiralty jurisdiction was that the wrong took place on the land and not on navigable waters.

To the same effect the case of *Martin* v. *West*, 222 U. S. 191. In that case the tort was not maritime because the bridge which was injured as a result of collision was so injured by collision before any part of it fell into the water, so that the determining character of this not being maritime was that the consummation of the wrong took place upon land.

In the case of *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 60, the question is raised as

to whether in addition to the exclusiveness of the test of locality in cases of tort it must not also be proved that the transaction was of a maritime character. That question does not seem to have been decided in that case as it was held that the work of stevedoring was undoubtedly maritime, the injuries sustained in that case being to a stevedore.

This court seems to have held in a case decided on January 3, 1922, *Grant Smith Porter Ship Co.* v. *Rhode*, that locality alone was controlling, as in that case it was held that admiralty jurisdiction extends to a proceeding to recover damages resulting to a tort committed on a vessel in process of construction and lying on navigable waters in the State. It, however, also held that on account of the exclusive features of the Oregan Workmen's Compensation Act that act would apply and abrogate the right to recover damages in an admiralty court.

As to accidental injuries received upon the land, the Supreme Court of Oregon, in *Rorrick* v. *Northern Pacific Lumber Co.*, 195 Pac. Rep. 163, held that the Workmen's Compensation Act was the exclusive remedy, saying:

> "The test for determining whether the tort is a land or maritime tort is not the same as the test for determining whether a contract is a land or a maritime contract. The character of a tort is determined by the locality of the tort; and consequently the fact that a person is injured while performing a maritime contract does not necessarily determine the character of a tort. * * *

> "From this conclusion it follows as a natural sequence that there was nothing in the character and nature of the tort to prevent the Workmen's Compensation Act of California from operating."

See also

Swayne & Hoyt, Inc., v. *Barsch*, 226 Fed. Rep. 581.

The Court of Appeals of the State of New York, however, in the cases of *Anderson* v. *Johnson Lighterage Co.* and *Keator* v. *Rock Plaster Mfg. Co.*, 224 N. Y. 539, 544, held by a vote of 4 to 3 that the Industrial Commission had no jurisdiction to make an award where longshoremen were injured on the pier, for the reason that the employee was engaged in performing a maritime contract, the decision in the two cases named being based upon the decision made at the same time in *Docy* v. *Howland Co.*, 224 N. Y. 30, in which the deceased employee concededly met his death upon a steamship and therefore was subject to admiralty jurisdiction.

In the *Keator* case, subsequent to the decision of that court, an action was commenced in admiralty in the United States District Court for the Southern District of New York, Judge Mayer (256 Fed. Rep. 574), dismissed the case because, as he clearly pointed out, the injury occurred on a dock and was not a maritime injury over which admiralty had jurisdiction. Judge Mayer said:

> "The jurisdiction of admiralty in tort cases is exclusively dependent upon the locality of the act. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52. In a number of cases the question has arisen as to whether

or not the tort should be regarded as having happened on the vessel or on the land where the tort was caused by an act which was started on the vessel or on the dock, as the case may be, and ended with death or injury on the land or vessel, as the case may be. In these cases it has been uniformly held that the locus of the tort is the place where the injury was actually inflicted. The *Mary Garrett*, D. C., 63 Fed. 1009, and cases cited. *Hermann* v. *Post Blakely Mill Co.*, D. C. 69 Fed. 646 and cases cited. *The Bee*, D. C. 216 Fed. 709 and cases cited. *As Keator was killed on the dock it is apparent that the tort was not maritime and, therefore, there is no jurisdiction in admiralty, and the exceptions must be sustained on the ground that there is lack of jurisdiction.*"

The result, therefore, of the litigation in the *Keator* case was that the Court of Appeals held that the State Industrial Commission had no jurisdiction because it was a case of admiralty jurisdiction, and the admiralty court decided that it had no jurisdiction for the reason that the injuries were not maritime but occurred upon the land.

Inasmuch as this question affects several thousand longshoremen who work in New York city, it was thought proper to bring the question to this Court for decision. The contention here made is that this State and its courts have jurisdiction unless that jurisdiction is ousted by the jurisdiction of the Federal admiralty courts. If the Federal courts have no jurisdiction by reason of the rule as to locality, we cannot see how the jurisdiction of the Federal courts would oust the State Industrial Commission of jurisdiction.

Since the decision in the *Keator* and *Anderson* cases, the case of *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 156, 158, has been decided. We have in the opinions delivered in that case, the majority opinion of Mr. Justice McReynolds and the minority opinion of Mr. Justice Holmes, statements further confirmatory of the position taken, that injuries received by an employee working under a maritime contract and received upon a dock might be compensable under the New York law. Mr. Justice McReynolds says, referring to the case of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205.

> "And we held that, when applied to *maritime injuries*, the New York Workmen's Compensation Law conflicts with the rules adopted by the Constitution and to that extent is invalid.
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> * * * * * * * * * *
>
> "We have held that before the amendment and irrespective of that section, such rights and remedies did not apply to *maritime torts* because they were inconsistent with paramount Federal law — within that field they had no existence."

Further in the *Stewart* case we find the following statement of Mr. Justice Holmes:

> "In *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, the question was whether there was anything in the Constitution or laws of the United States to prevent a State from imposing upon an employer a limited but absolute liability for the death of an employee upon a gang-plank between a vessel and a wharf, *which the State unquestionably could have imposed had the death occurred on the wharf.*"

Mr. Justice Holmes here seems to speak for the whole court when he states that the State unquestionably could have imposed the liability had the death occurred on the wharf, and his opinion is concurred in by the statement in Mr. Justice McReynold's opinion with reference to maritime injuries.

It will be borne in mind that in the *Stewart* case William M. Stewart suffered injuries of a maritime nature in that he fell into the Hudson river and was drowned, maritime injuries being such injuries as occur upon or in navigable waters. Mr. Justice McReynolds in the *Jensen* case also refers to maritime injuries, Jensen having been injured on the gang-plank of the vessel. He says:

> "His employment was a maritime contract; THE INJURIES WHICH HE RECEIVED WERE LIKEWISE MARITIME; and the rights and liabilities of the parties in connection therewith were matters within the admiralty jurisdiction. * * * *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, * * *
>
> The Legislature exceeded its authority in attempting to extend the Statute under consideration *to conditions like those here disclosed*. So applied, it conflicts with the Constitution and to that extent is invalid."

If there is no jurisdiction in admiralty for an injury to a stevedore or any other employee upon the dock, then it would seem that the rule of law enunciated by this court in *Southern Pacific Co.* v. *Jensen*, would have no application as the only ground for the rule there enunciated was that there was no jurisdiction for the injury there sustained, which was on board the vessel.

In the *Stewart* case the injury was not consummated until the man struck the water and was drowned. His drowning constituted a maritime injury and, therefore, brought it under the Admiralty Law. He was not injured upon the land and might have been alive except for the accident of drowning after he struck the water.

The Longshoreman and Harbor Worker

Accidents which arise upon the land are surely subject to State jurisdiction. The harbor group of workmen consists of longshoremen, carpenters, painters, machinists, pipe fitters, blacksmiths, electricians, boiler makers and many others who live and work upon the shore. The larger part of the longshore work in handling of cargoes is on the *terra firma*. These men live in the cities around the harbor and are or should be entitled to protection of the particular place or country where they live. If he is hired on shore the employer on shore ought to compensate him.

There are about 250,000 harbor workers in the United States. There are 15,000 harbor workers in New York City, besides longshoremen and stevedores whose numbers were 17,165 according to the census of 1910 but estimated by the Wainwright Commission to be from 40,000 to 50,000. During the time that the Compensation Law was regarded as applying to them one-tenth of all the accidents reported in the State happened to longshoremen.

Longshore work is one of the most dangerous occupations in the country. Cargoes are handled amid a tangle of ropes, gear, spans, masts, derricks, and swinging booms. Huge loads of

goods jerked from the hold or pier sway and twirl as they rush through the air and swing past the heads of men. Spans of steel wire sag and sway. On the pier, packages are trucked back and forth, bags are carried on the back, bales and boxes tiered up amid the confusion of horses and wagons, the cries of teamsters, and the swinging of drafts. At night all these dangers are increased. The light is less adequate; signals are not so readily understood. There is usually the weariness from the day's work just passed; men are likely to relax their usual caution or to drop asleep at critical moments. Men are often kept continuously at work from fifteen to forty hours. They are obliged to do very heavy physical work. Mr. J. F. Riley testified before the Commission on Industrial Relations in 1914 that longshore work would use a man up in about ten years, and it is rare to find a longshoreman who has never suffered from an accident. The lists of weights which men carry on their back was testified to by Mr. Riley as running from 100 to 320 pounds. On an average, under ordinary working conditions, a longshoreman handles about 3,000 pounds per hour. Accidents occur from defective gear and machinery and lack of adequate safeguards; from carelessness in doing the work; from exposure in all kinds of weather; the hot glare of the summer sun; the cold bleak winds of winter, with freezing limbs, numb fingers, and icy floors and tackle to add to the risk. Some cargoes give off dust and fumes which are dangerous to health. Hands of longshoremen are frequently cut and bruised by the sharp corners of boxes, the chimes of barrels, or bales of dried hides or barbed wire and other similar freight, and there is always danger of blood poisoning from such wounds.

A seaman's work is entirely different. A sailor during his employment on a vessel remains on the ship for the entire trip. If he is injured or taken ill during the voyage he is entitled to receive treatment free of cost to himself from the ship's physician and later, if necessary, by the United States Marine Hospital. Seamen are continuously employed on the vessel. When the vessel is unloaded it is loaded again and sails for another port. It is entirely proper that a national compensation law should be enacted for seamen whose occupation takes them into different countries. They are not in the same class with the workmen who live and work on the shore. A general compensation law for sailors would make for uniformity of all the sailors of this country to whatever State they may belong, but for the longshoremen and ship repairmen who are workmen whose interests are local and not nation-wide, for them *uniformity* means uniformity with their fellow workmen in the said city or State.

Contract

The Court of Appeals seems to have based its decision upon the fact that remedy for compensation was a matter of contract. We do not see how that affects the question, provided admiralty had no jurisdiction of the subject-matter, the subject-matter being the injury received by the employee while standing on the land. We think also that the Court of Appeals is in error in basing the foundation of the Workmen's Compensation Law upon contract. While it may be true that the Compensation Law reads its requirements into every contract of employment, still the

foundation of the New York Compensation Law is not contract but a statutory liability which takes the place of the common law liability for negligence. The highest authority upon this subject is the opinion of this court in the cases of *N. Y. Central R. R. Co.* v. *White*, 243 U. S. 188, and *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, in which this court upholds the Workmen's Compensation Law upon the ground that it takes the place of the former liability for negligence and that the liability is a statutory liability.

Even if the employment of a longshoreman or repairman is a maritime contract, there is no Federal law governing the relation of master and servant in respect to accidents happening on land so that either the State law of torts or the Compensation Law of the State is the only remedy for accidents of this kind. Where the accident happens on land there is no admiralty tort, and, therefore, no uniform law which can be applied. As the law of the State upon the subject is only limited by jurisdiction of the Federal courts, if the Federal courts have no jurisdiction upon the land there is no reason why the State jurisdiction should not be effective. The power of the State to determine what damage shall be recovered for a work accident, at least when it is a tort, is part of the general police power of the State and is not limited in any way by the admiralty clause of the Constitution since there is no admiralty jurisdiction over accidents on land. Congress under the admiralty power cannot deprive the states of rights to legislate in respect to torts on land and Congress has not attempted to exercise that power.

Moreover the jurisdiction with reference to contracts is concurrent in the State courts and admiralty courts under the reservation of a common law remedy where a common law remedy is applicable.

Leon v. *Galceran*, 11 Wall. 185, 188.
Rounds v. *Cloverport Foundry Co.*, 237 U. S. 303.
Schoonmaker v. *Gilmore*, 102 U. S. 118.

Nor is the reservation of a common law remedy limited to such clauses of action as were known to the common law at the time of the passage of the Judiciary Act but includes statutory changes.

Steamboat Co. v. *Chase*, 16 Wall. 522, 533.
Knapp, Stout & Co. v. *McCaffrey*, 177 U. S. 638, 644.
The Hamilton, 207 U. S. 398, 409.

In some of the states it may be said that the compensation remedy is based upon contract, i. e. in those states in which compensation is elective rather than compulsory. In such states both the employer and employee have the right to decide whether they shall enter into the relation providing workmen's compensation in the case of accident; but even in those states where the theory of contract prevails it has been held that injuries occurring upon the wharf, dock or pier are not governed by admiralty law but by the compensation law of the State.

In the case of *Berry* v. *M. F. Donovan & Sons, Inc. and The Travelers Insurance Company*, 115 Atlantic 250 the Supreme Court of Maine held that where compensation was based upon the theory of contract admiralty jurisdiction would not interfere with accidents happening upon the wharf. In that case a local stevedoring corporation, having contracted with a ship to discharge the cargo, hired the plaintiff, a longshoreman, to assist in unloading. In performing his duties, the plaintiff stood on a platform on the wharf. To this platform a sling, operated by a traveling derrick on the vessel, brought successive loads of the ties, from whence the ties were placed on a truck to be wheeled to another part of the wharf. The Court sustained the claim for compensation on the theory of contract, saying:

> "One may pause to inquire if this may not be what, in the opinion in *The Lottawanna, supra*, is referred to as an 'equivalent of a common law remedy'; he may halt seriously to ask himself if after all this be other than a manifestation of the quality of marching forward, in all its sanctity and inviolability, inherent in the Constitution of his country, which makes that fundamental institution to keep step, as the common law too keeps step, with the van of the procession of society in safe and sane progress. Yet the question is not so much whether there be here the equivalent of a common law remedy, nor yet whether the Federal Constitution, instinct with life and with the attribute of nationality, of its own impulsion moves forward, as the years roll around, to meet and regulate the changing circumstances of human affairs in America; but, rather, whether concerning a contract maritime in

relationship, to which neither a vessel nor a vessel's owner be party, there may be made another contract deserving of respect in the jurisdiction where made. In this rigorous climate, where the winds of common sense blow free and strong, that contract seems anchored secure within a safe legal haven."

POINT II

The Only Remedy for Death From Maritime Accidents in the State of New York is the Remedy of Workmen's Compensation.

Group 8 of section 2 provides for the operation of vessels, and group 10 for longshore work. The remedy and liability for compensation is provided in sections 10 and 11, section 11 providing:

> "The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to recover damages, at common law or otherwise on account of such injury or death," etc.

Under this provision the Court of Appeals has declared that this remedy was exclusive and a bar to an action under section 1902 of the Code of Civil Procedure, which provided for a remedy in damages in case of death.

> *Shanahan* v. *Monarch Engineering Co.*, 219 N. Y. 469.
> *Barnhardt* v. *American Concrete Steel Co.*, 227 N. Y. 531.

In the case of *Western Fuel Co., Petitioner* v. *Antone Garcia, as Adm. of Estate of Manual*

Souza, deceased, decided December 5, 1921 by this court, this court through Mr. Justice McReynolds said:

> "It is established doctrine that no suit to recover damages for the death of a human being, caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for an injury resulting in death. The maritime law as generally accepted by maritime nations leaves the matter untouched, and in practice each of them has applied the same rule to the sea which maintains on land. *The Harrisburg*, 119 U. S. 204, 213; *The Alaska*, 130 U. S. 201, 209; *La Bourgogne*, 210 U. S. 95, 138, 139."

There being, therefore, no remedy for accidents causing death in the harbor of New York except the Workmen's Compensation Law, admiralty has no jurisdiction and the jurisdiction of the State Industrial Commission should apply.

The Judgment of the Court of Appeals Should be Reversed.

E. CLARENCE AIKEN,
Of Counsel.

STATE INDUSTRIAL COMMISSION OF THE STATE OF NEW YORK *v.* NORDENHOLT CORPORATION ET AL.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 625. Argued March 9, 1922.—Decided May 29, 1922.

1. When an employee, while working on board a vessel lying in navigable waters, sustains personal injuries there and seeks damages from his employer, the liability of the employer must be determined under the maritime law. P. 272.
2. But where the injuries occur while the employee is engaged in unloading the vessel on land the local law has always been applied. P. 273.
3. A longshoreman was injured on a dock (an extension of the land) while engaged about the unloading of a vessel lying in navigable waters in New York, and died as a result of his injuries. *Held*, that his contract of employment did not contemplate any dominant

federal rule concerning his employer's liability in damages; and that whether awards under the State Compensation Act are to be regarded as made upon implied agreement of employer and employee, or otherwise, the act was applicable to the case, since this would not conflict with any federal statute or work material prejudice to any characteristic feature of the general maritime law. P. 275. *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, and other cases, distinguished.

195 App. Div. 913; 232 N. Y. 507, reversed.

CERTIORARI to a judgment of the Supreme Court of New York, Appellate Division, entered upon a remittitur issued from the New York Court of Appeals pursuant to a decision of the latter court which affirmed a reversal by the former court of an order made under the State Workmen's Compensation Act by the present petitioner requiring the respondents to pay compensation to the widow of a longshoreman who died as the result of personal injuries received while in the employ of the respondent Nordenholt Corporation.

Mr. E. Clarence Aiken, with whom *Mr. Charles D. Newton*, Attorney General of the State of New York, was on the brief, for petitioner.

An injury on a dock, pier or wharf is not a maritime injury and, therefore, not within the admiralty law. If there is no jurisdiction in admiralty, there is no foundation for denying jurisdiction under the New York Workmen's Compensation Law. *The Blackheath*, 195 U. S. 361, 365; *The Plymouth*, 3 Wall. 20, 36; *Cleveland Terminal & Valley R. R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316; *Martin* v. *West*, 222 U. S. 191; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 60; *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469; *Rorvik* v. *North Pacific Lumber Co.*, 99 Ore. 82; *Swayne & Hoyt, Inc.* v. *Barsch*, 226 Fed. 581.

Anderson v. *Johnson Lighterage Co.*, 224 N. Y. 539, and *Keator* v. *Rock Plaster Mfg. Co.*, 224 N. Y. 540, held

that the Industrial Commission had no jurisdiction where longshoremen were injured on a pier, because they were engaged in performing a maritime contract, following *Doey* v. *Howland Co., Inc.*, 224 N. Y. 30, in which the employee concededly met his death upon a steamship and therefore was subject to admiralty jurisdiction. In the *Keator Case*, subsequent to the decision in 224 N. Y. 540, the Federal District Court dismissed an action in admiralty, on the ground that the injury was not of a maritime nature. 256 Fed. 574. But *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, decided after the *Keator* and *Anderson Cases*, sustains the view that injuries to an employee working under a maritime contract and received upon a dock might come under the state compensation law. See pp. 158, 162, 166. The injuries in the *Stewart* and *Jensen Cases* occurred in navigable waters or on board vessel, and therefore were within the admiralty jurisdiction.

The Court of Appeals erred in basing its decision upon the fact that remedy for compensation was a matter of contract. That does not affect the question, provided there is no admiralty jurisdiction over injuries received on land. True, the Compensation Law reads its requirements into every contract of employment, but the foundation of that law is not contract but a statutory liability which takes the place of the common-law liability for negligence. *New York Central R. R. Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219.

Even if the employment of a longshoreman is a maritime contract, there is no federal law governing the relation of master and servant in respect of accidents on land; so that either the state law of torts or the state compensation law is the only remedy. Where the accident happens on land, there is no admiralty tort, and, therefore, no uniform law which can be applied. Congress

under the admiralty power cannot deprive the States of the right to legislate in respect of torts on land, and it has not attempted to exercise that power.

Moreover, the jurisdiction with reference to contracts is concurrent in the state and admiralty courts, under the reservation of a common-law remedy where a common-law remedy is applicable. *Leon* v. *Galceran*, 11 Wall. 185, 188; *Rounds* v. *Cloverport Foundry Co.*, 237 U. S. 303; *Schoonmaker* v. *Gilmore*, 102 U. S. 118. The reservation of such remedy is not limited to causes of action known to the common law at the time of the passage of the Judiciary Act, but includes statutory changes. *Steamboat Co.* v. *Chase*, 16 Wall. 522, 533; *Knapp, Stout & Co.* v. *McCaffrey*, 177 U. S. 638, 644; *The Hamilton*, 207 U. S. 398, 409.

In States where the compensation remedy is based upon contract, i. e., where the compensation is elective rather than compulsory, it is held that injuries occurring upon the dock are not governed by admiralty law but by the state compensation law. See *Berry* v. *Donovan & Sons, Inc.*, 115 Atl. 250.

The only remedy for death from maritime accidents in New York is the remedy of the workmen's compensation law. *Shanahan* v. *Monarch Engineering Co.*, 219 N. Y. 469; *Barnhardt* v. *American Concrete Steel Co.*, 227 N. Y. 531. See *Western Fuel Co.* v. *Garcia*, 257 U. S. 233.

Mr. E. C. Sherwood, with whom *Mr. Benjamin C. Loder* and *Mr. William B. Davis* were on the brief, for respondents.

While admiralty jurisdiction in tort depends on the locality, in matters of contract it depends on the subject-matter, the nature and character of the contract. *North Pacific S. S. Co.* v. *Hall Bros. Co.*, 249 U. S. 119; *Union Fish Co.* v. *Erickson*, 248 U. S. 308.

The work of unloading a vessel is maritime and a contract to do such work is maritime. *Atlantic Transport*

Co. v. *Imbrovek,* 234 U. S. 52, 62; *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205; *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149; *Peters* v. *Veasey,* 251 U. S. 121.

The question whether an elective compensation statute would be effective in the circumstances upon which this proceeding is based, if the employer and the employee had elected to accept its provisions, is not here presented. *Grant Smith-Porter Ship Co.* v. *Rohde,* 257 U. S. 469; *Berry* v. *Donovan & Sons, Inc.,* 120 Maine, 457; but see *Duart* v. *Simmons,* 231 Mass. 313.

Under the New York Compensation Law the liability depends not at all upon the will of the parties to the contract of employment, nor rests upon the theory that there has been fault on the part of the employer. The sole basis of liability is the relationship of employer and employee, plus only the occurrence of an accidental injury arising out of and in the course of the work contemplated by the contract of employment. The liability is grounded upon the contract of employment itself. It is purely contractual, and for this reason follows the parties to the contract when they go into a foreign jurisdiction whose laws regulate the whole question of the employee's right to recover damages for personal injuries; provided only that the contract of employment was entered into within the State of New York. *Post* v. *Burger & Gohlke,* 216 N. Y. 544; *Klein* v. *Stoller & Cook Co.,* 220 N. Y. 670; *Fitzpatrick* v. *Blackall & Baldwin Co.,* 220 N. Y. 671. Cf. *Kruse* v. *Pillsbury,* 162 Pac. 891; *Gould's Case,* 215 Mass. 480, 482.

The question here involved is therefore closely akin to that presented in *Union Fish Co.* v. *Erickson,* 248 U. S. 308.

Counsel for the State Industrial Commission contend, in effect, that the New York Compensation Law ought to be applied in this case, because in the present state of

the law a cause of action cognizable in admiralty did not arise upon and on account of the death of Insana. A somewhat similar idea prevailed in the New York Court of Appeals in the case of *Winfield* v. *New York Central R. R. Co.*, 216 N. Y. 284, in which it was held by that court that this same statute was applicable to cases arising out of work done in connection with interstate commerce, since Congress had not enacted a federal compensation statute; but upon review in this court the error was pointed out and corrected. 244 U. S. 147. The absence of such a federal law is not the controlling consideration. It is more pertinent to inquire: Has Congress the power to enact a compensation statute applicable to all cases of accidental injury and death arising out of and in the course of maritime employment (e. g., stevedoring operations), which occur on the dock as well as to those occurring on the vessel?

The Federal Government's jurisdiction over matters of a maritime nature is not limited to mere adjudication of admiralty causes by the courts of the United States, but resides also in the legislative and executive branches. *Richardson* v. *Harmon*, 222 U. S. 96.

The primary purpose of the constitutional grant of jurisdiction over maritime affairs and over matters relating to the rights of those engaged in shipping, was to insure general uniformity in the law—not merely in the law of torts. *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 160; *The Lottawanna*, 21 Wall. 558, 574; *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372.

The field of this jurisdiction is very broad. It covers "maritime matters", "all subjects of a commercial character affecting the intercourse of the States," and the international and interstate relations arising out of maritime operations. *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205.

In seeking to apply the *Jensen* decision the problem is whether the statute works material prejudice to charac-

teristic features incident to the relationship of employer and employee created by the maritime contract of employment. It is pertinent to consider the practical results of attempting to apply the statute to a case like the present one. When we do this we are met at the outset with the consideration that the statute is inapplicable to any case where the accident occurs on or in the water, or upon a vessel afloat in the water. The practical results of applying it to all accidents occurring inshore of the water line would be confusion and conflict, indefensible upon any theory of common sense or practical utility. The operation of loading or unloading a ship moored alongside a dock, work which in its very nature is continuous and indivisible, would be divided physically in half. One system of law would be applied to one part, while another system, entirely and fundamentally different, would be applied to the other. Uniformity of the law, which is frequently spoken of in connection with these cases, does not lie in that direction.

It does not follow that, if the compensation law is not applicable, there is no remedy in a case where the accident can be traced to the fault of the employer.

If the maritime law of torts as now understood and applied by courts of admiralty does not extend to the subject-matter, the state law of torts may be applicable to it, even though the particular state statute here in question may not be so.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Sebastiana Insana, mother of Guiseppe Insana, asked of the New York State Industrial Commission an allowance under the Workmen's Compensation Law on account of her son's death, which she claimed resulted from accidental injuries received May 15, 1918, in the course of his employment as a longshoreman by the Nordenholt Cor-

poration then unloading a vessel lying in navigable waters at Brooklyn. The cargo consisted of bags of cement. These were hoisted to the dock and there tiered up by Insana and other longshoremen. While thus engaged, he slipped and fell on the dock.

The Commission found "the accidental injuries which the said deceased sustained while working for his employer when he fell from the pile of bags to the floor were the activating cause of his death, and his death was a direct result of the injuries sustained by him while engaged in the regular course of his employment," and awarded compensation as specified by the statute. Upon authority of *Keator* v. *Rock Plaster Manufacturing Co.*, 224 N. Y. 540, and *Anderson* v. *Johnson Lighterage Co.*, 224 N. Y. 539, the Appellate Division reversed the award, 195 App. Div. 913, and the Court of Appeals affirmed its action without opinion, October 25, 1921, 232 N. Y. 507.

In both the *Keator* and *Anderson Cases*, the employee suffered injuries on land while helping to unload a vessel lying in navigable waters. The Court of Appeals held when so injured he was performing a maritime contract and that for reasons stated in *Doey* v. *Howland Co., Inc.*, 224 N. Y. 30, the Industrial Commission had no jurisdiction to make an award. While making repairs on an ocean-going vessel lying at the dock in navigable waters, Doey fell down a hatchway and sustained fatal injuries. The Appellate Division reversed an award of compensation, and the Court of Appeals affirmed its action, holding that as Doey was performing a maritime contract the Commission had no jurisdiction, under the doctrine of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, and *Clyde S. S. Co.* v. *Walker*, 244 U. S. 255. It said (224 N. Y. 35, 36):

"Two questions are presented: (a) Was Doey, at the time of his death, engaged in the performance of a maritime contract? . . .

"If the first question be answered in the affirmative, then it necessarily follows from the decisions of the Supreme Court of the United States above referred to [*Southern Pacific Co.* v. *Jensen*, and *Clyde S. S. Co.* v. *Walker*], that the commission had no authority to make the award in question. In determining whether a contract be of maritime nature, locality is not controlling, since the true test is the subject-matter of the contract—the nature and character of the work to be done. (*Erie R. R. Co.* v. *Welsh*, 242 U. S. 303.) In torts the rule is different. There, jurisdiction depends solely upon the place where the tort was committed, which must have been upon the high seas or other navigable waters. (*Atlantic Transport Co. of W. Va.* v. *Imbrovek*, 234 U. S. 52.) An award under the Workmen's Compensation Law is not made on the theory that a tort has been committed; on the contrary, it is upon the theory that the statute giving the commission power to make an award is read into and becomes a part of the contract. (*Matter of Post* v. *Burger & Gohlke*, 216 N. Y. 544.) The contract of employment, by virtue of the statute, contains an implied provision that the employer, if the employee be injured, will pay to him a certain sum to compensate for the injuries sustained, or if death results, a certain sum to dependents. These payments are made irrespective of whether or not the employer was guilty of wrongdoing. It is a part of the compensation agreed to be paid for services rendered in the course of the employment.

"In the present case, upon the conceded facts, I am of the opinion that Doey was, at the time he met his death, engaged in the performance of a maritime contract. His employer had taken a contract to repair an ocean-going vessel, preparatory to its taking on a cargo of grain. Doey was one of several carpenters employed to make the necessary changes. He was, at the time he was killed, engaged in such work on a steamship then in navigable waters.

The contract to make the changes was certainly maritime in its nature. Preparing a steamship to receive a cargo is as much maritime in nature as putting the cargo on or taking it from the ship. Nor was the nature of the contract changed in any way because the contractor did not actually do the work himself, but employed others to do it for him. Doey's contract of employment was just as much of a maritime nature as was that of his employer. . . ."

An award to Newham, injured on the dock while checking freight and doing work similar to that of a foreman of stevedores was set aside in *Newham* v. *Chile Exploration Co.*, 232 N. Y. 37 (October 18, 1921). The court said:

"We have held in *Matter of Doey* v. *Howland Co.*, 224 N. Y. 30, and in *Matter of Anderson* v. *Johnson Lighterage Co.*, 224 N. Y. 539, and in *Matter of Keator* v. *Rock Plaster Manufacturing Co.*, 224 N. Y. 540, that if the employee was engaged at the time of his injury in the performance of a maritime contract the state did not have jurisdiction of the matter and the Workmen's Compensation Law did not apply. This is the deduction which we have made from the cases of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, and *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149."

The court below has made deductions from *Southern Pacific Co.* v. *Jensen*; *Clyde S. S. Co.* v. *Walker*, and *Knickerbocker Ice Co.* v. *Stewart*, which we think are unwarranted, and has proceeded upon an erroneous view of the federal law.

When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no

general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land.

The injuries out of which *Southern Pacific Co.* v. *Jensen* arose occurred on navigable waters, and the consequent rights and liabilities of the parties were prescribed by the maritime law. The question there was whether these rules could be superseded by the Workmen's Compensation statute of the State, and this court held they could not. In the opinion, citing *Atlantic Transport Co.* v. *Imbrovek,* 234 U. S. 52, 59, 60, we said, "The work of a stevedore in which the deceased [Jensen] was engaging is maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction." The doctrine that locality is the *exclusive* test of admiralty jurisdiction in matters of tort had been questioned in the *Imbrovek Case,* and to show beyond any doubt that the maritime rules applied as to Jensen's injuries, we used the quoted language. Later, in *Grant Smith-Porter Ship Co.* v. *Rohde,* 257 U. S. 469, we said, "The general doctrine that in contract matters admiralty jurisdiction depends upon the nature of the transaction and in tort matters upon the locality, has been so frequently asserted by this court that it must now be treated as settled."

In *Chelentis* v. *Luckenbach S. S. Co.,* 247 U. S. 372, 382,—an action at law seeking full indemnity for injuries received by a sailor on shipboard—this was said:

"The work about which petitioner was engaged is maritime in its nature; his employment was a maritime contract; the injuries received were likewise maritime and the

parties' rights and liabilities were matters clearly within the admiralty jurisdiction. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 59, 60. And unless in some way there was imposed upon the owners a liability different from that prescribed by maritime law, petitioner could properly demand only wages, maintenance and cure. Under the doctrine approved in *Southern Pacific Co.* v. *Jensen*, no State has power to abolish the well recognized maritime rule concerning measure of recovery and substitute therefor the full indemnity rule of the common law. Such a substitution would distinctly and definitely change or add to the settled maritime law; and it would be destructive of the 'uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.'"

See also *Peters* v. *Veasey*, 251 U. S. 121; *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149.

In *Union Fish Co.* v. *Erickson*, 248 U. S. 308, it was held that when entering into maritime contracts the parties contemplate the system of maritime law, and its well known rules control their rights and liabilities to the exclusion of state statutes.

In *Western Fuel Co.* v. *Garcia*, 257 U. S. 233, it was held that where a stevedore's death on a ship within the State resulted from injuries there received, an admiralty court, in the absence of federal statute or positive maritime rule, would recognize and apply the state statute giving an action for damages on account of death. "The subject is maritime and local in character and the specified modification of or supplement to the rule applied in admiralty courts, when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations."

In *Grant Smith-Porter Ship Co.* v. *Rohde, supra,* a carpenter proceeding in admiralty sought damages for injuries received while at work on a partially completed vessel lying in the Willamette River. The Oregon Workmen's Compensation Law prescribed an exclusive remedy, and the question presented was whether to give it effect would work material prejudice to the general maritime law. The accident occurred on navigable waters and the cause was of a kind ordinarily within the admiralty jurisdiction. Neither the general employment contracted for nor the workman's activities at the time had any direct relation to navigation or commerce—it was essentially a local matter—and we said—

"Under such circumstances regulation of the rights, obligations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in its international or interstate relations. . . .

"In *Western Fuel Co.* v. *Garcia,* we recently pointed out that as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter might be modified or supplemented by state statutes. The present case is controlled by that principle. The statute of the State applies and defines the rights and liabilities of the parties. The employee may assert his claim against the Industrial Accident Fund to which both he and the employer have contributed as provided by the statute, but he can not recover damages in an admiralty court."

Insana was injured upon the dock, an extension of the land, *Cleveland Terminal & Valley R. R. Co.* v. *Cleveland S. S. Co.,* 208 U. S. 316, and certainly prior to the Workmen's Compensation Act the employer's liability for damages would have depended upon the common law and the

state statutes. Consequently, when the Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law. And this is true whether awards under the act are made as upon implied agreements or otherwise. The stevedore's contract of employment did not contemplate any dominant federal rule concerning the master's liability for personal injuries received on land. In Jensen's case, rights and liabilities were definitely fixed by maritime rules, whose uniformity was essential. With these the local law came into conflict. Here no such antagonism exists. There is no pertinent federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law. Compare *New York Central R. R. Co.* v. *Winfield,* 244 U. S. 147.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.